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The Rate-fixing Powers of the State Commissions

An analysis of the criticism that the regulatory bodies are "too judicially minded"

BY HENRY C. SPURR

IT is said that our public service commissions are becoming "too judicial." This is a double-barreled criticism that involves two ideas. One is that it is bad in itself for a commission to be too judicial. The other is that it is bad for a commission to be too judicial because the legislatures did not intend that the commissions should be judicial.

This charge against commission regulation is so general and indefinite that one may well wonder just what the critics mean by it.

If by being "judicial" the commissions are merely trying to be fair, that would not seem to be so bad. Most persons would regard it as a point in favor of the commissions. A man of cool judicial temper is more reliable than one of hot partisan impulses. Consequently, the critics could hardly mean that it is wrong for the commissions to be fair in disputes between utility companies and their customers. They must, therefore, have something else in mind, but what can it be?

LET us take a typical statement of the "too judicial" commission attitude:

> "The commissions were not established primarily to decide conflicting claims according to law as were the courts. Rather they were set up definitely as agencies designed to aid the legislature in the development of policies and the administrative control of utility regulation. It was as-

sumed that the courts would be adequate to protect the utilities from unwarranted interference, from unfair discrimination, or from confiscatory rates.[1]

Taken by itself this statement needs clarifying. In the first sentence the qualifying words "primarily" and "according to law" etc., make the author's meaning somewhat uncertain and elusive.

Does this statement mean that the commissions were not established primarily to decide conflicting claims, but that this was only a secondary purpose? Or does it mean that they were not established to decide conflicting claims "according to law as the courts do" but in some other way?

Judging from his discussion of the subject, the author probably means both: First, that the commissions were not organized primarily to decide disputes, and, second, that where they do have to decide disputes, they should not do so in the way the courts do. It will be observed that this second supposition is also general. Without a bill of particulars one does not know whether or not to agree with it.

AND just what is meant by "agencies designed to aid the legislature in the development of policies and the administrative control of utility regulation?"

Does this mean that the primary duty of the commission is merely to render annual reports to the legislature, advising the lawmakers what regulatory policies should be adopted, and that in the meantime they should devote the greater share of their attention to the investigation of accidents, audit of utility reports, compilation of statistics, the testing of meters, and other purely administrative activities?

And what is meant by the statement that it was assumed that the courts would be adequate to protect the utilities from unwarranted interference, from unfair discrimination, or from confiscatory rates?

Does this mean that the legislatures assumed that the commissions would act without regard to fair treatment of utility stockholders, or even that they should be careless in respect to unwarranted interference with utility business, or in the matter of discrimination or confiscatory rates, on the ground that the courts are always open for the redress of wrongs?

Does it mean that the legislatures assumed that the rights of customers are to be deemed more sacred in the minds of the commissions than the rights of stockholders on the theory that if the stockholders do not like it, they can appeal to the courts for justice? If not, just what sort of favoritism toward ratepayers did the legislatures assume the commissions would indulge in because the courts are always open to stockholders? And if ratepayer favoritism by commissions was the assumption of the legislatures, why condemn utility stockholders for appealing to the courts? Stockholders are entitled to a fair hearing somewhere; if they cannot get it before the commissions, they should not be blamed for appealing to the courts, especially if that is just what the legislature intended they should do.

But why speculate about this? Who is competent to say, off the record, what the primary purpose of the New

[1] "Electrical Utilities: The Crisis in Public Control," by William E. Mosher and others, pp. 20, 21.

York, Wisconsin, California, or other state legislatures was in passing the public utility regulatory laws? Who can say what the legislatures assumed?

The best evidence of their purpose and of what they may have assumed is to be found in the written laws themselves. This written evidence of purpose is more reliable than would be the testimony even of individual legislators who voted for the laws. What the purpose of the legislators may have been, or what they may have assumed is of not the slightest importance, if in conflict with the purpose clearly expressed in the laws themselves.

LOOKING into the laws we find that few of the state regulatory commissions have any judicial powers in the strict sense. If a commission has power to award and enforce reparation for overcharges by utility companies, it is vested with a judicial power. If it has power to fix the award for property taken or damaged in grade crossing separation it has judicial power. If it has power to commit for contempt it has judicial power. But the fixing of a rate for utility service is the exercise of a legislative and not of a judicial power, although it may require a previous investigation of facts upon which the commission bases its orders. This required investigation may, however, be *quasi* judicial in that it implies "a strong superficial analogy or resemblance" to a strictly judicial proceeding.

The commissions have never claimed that they are courts or that they have general judicial powers. They have frequently been asked to assume judicial powers but have consistently refused to do so.

But saying that commissions generally are not vested with judicial powers is quite different from saying that the commissions were not established primarily to decide conflicting claims according to law as were the courts.

Neither the laws themselves nor the history of regulation bears out that statement. The regulation of utility rates and service is the cornerstone of all commission laws. Everything else is subordinate to that.

WHAT was the chief purpose of the establishment of the commissions? Was it not to secure adequate service at reasonable rates and the elimination of discriminatory practices as an offset to or assurance against monopoly privileges? As a Texas court has said:

> "The framers of the Constitution in authorizing a railroad commission and the legislature in creating it merely contemplated that its chief function would be to fix rates binding alike upon carriers and shipper, subject to revision only in

¶ "WHAT *is the basis of most of the criticism of commission regulation? A difference of opinion as to the reasonableness of rates. What is the real basis of the criticism that commissions are 'too judicial?' A difference of opinion as to the method by which the reasonableness of rates are established.*"

the mode expressly pointed out in the statute.[2]

What is the basis of most of the criticism of commission regulation? A difference of opinion as to the reasonableness of rates.

What is the real basis of the criticism that commissions are "too judicial?" A difference of opinion as to the method by which the reasonableness of rates are established. Nothing else.

If then the chief function of the commission is to require the utilities to render adequate service at reasonable, nondiscriminatory rates, then its chief function is to make orders—legislative if you will—in respect to rates and service, rather than to inspect meters, compile statistics, and report to the legislature.

IF the commissions are expected to base rate and service orders on facts developed independently or with the assistance of stockholders and ratepayers, their chief function is to settle conflicting claims as to the reasonableness of rates and service.

When a commission renders a rate or service order based upon conflicting evidence, produced on commission initiative or otherwise, it is a settlement of conflicting claims whether or not that final commission act is strictly legislative or the whole proceeding *quasi* judicial. The settlement of these rate and service controversies was not only the chief purpose of the public service commission law but practically the only thing which the public cares anything about. If there were no differences of opinion as to these matters, there would be no criticism of commission regulation.

If, then, it is the chief function of the commission to settle conflicting claims in respect to these matters, is it their chief function to settle them according to law as the courts do or to settle them in some other way?

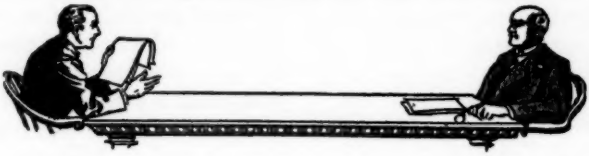
WHAT do critics mean by not settling "conflicting claims according to law as the courts do?" The advocate of a theory may ignore statutes and court decisions in expounding his theory. He may criticize and object to law, even to fundamental constitutional law. But state commissions are bodies created by law. Their powers are strictly limited by law. They have not the same freedom that the theorists have. They can rightfully ignore neither the law by which they were created nor any other law. As was well said by the Illinois commission:

> "The commission is bound by its oath to follow the law and must, therefore, abstain from idle gestures and futile orders, plainly reversible upon appeal."[3]

That is not only good law but good ethics. Surely the critics cannot mean that the commissions in rendering their decisions should ignore the law, even if the courts are open to the injured party for redress. Consequently, there is not much left to the assertion that the commissions were not expected to decide conflicting claims according to law as the courts do, but the preliminary question of procedure and the ultimate question of the fairness or judicial quality of commission decisions.

[2] Producers' Refining Co. *v.* Missouri, K. & T. R. Co. (Tex. Com. App.) P.U.R. 1929C, 622.

[3] Illinois Commerce Commission *v.* Chicago Motor Coach Co. (Ill. 1928) P.U.R. 1929A, 96.



The Purpose of the Commission Is to Settle Rate Claims

"WHEN a Commission renders a rate or service order based upon conflicting evidence . . . it is a settlement of conflicting claims whether or not that final commission act is strictly legislative or the whole proceeding quasi judicial. The settlement of these rate and service controversies was not only the chief purpose of the public service commission law but practically the only thing which the public cares anything about."

As to procedure, suppose we look at a typical statutory provision taken from the California Public Utilities Act:

"Sec. 60. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission; *provided*, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred or not less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water, or telephone service. . . ."

"Sec. 61. At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision. . . . A full and complete record of all proceedings had before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record, and proceedings in the cause, shall constitute the record of the commission."

STATUTES of this kind show that the legislatures contemplated some formality in the conduct of hearings on conflicting claims and the creation of a fairly complete and accurate record of the facts upon which the decisions of the commissions rest. This is especially important where, as in California, the findings and conclusions of the commission as to facts

are final and not subject to review. A case has recently been returned to the Pennsylvania commission by the superior court of that state for more specific findings of fact upon which it based its conclusions. In other words, the court held that the commission was not too judicial but, on the contrary, it was not judicial enough.

None of the commissions adheres to the strict forms of legal procedure in the conduct of cases, but there is a certain degree of formality which must be followed if the final decision of the commission is to be of any value. There is nothing in any of the commission laws to show that it was the purpose of the legislature that these controversies between stockholders and ratepayers should be settled by strong-arm methods. Anything of that kind would merely result in the transfer of cases from the commission to the courts and double the expense of regulation. Such, judging from the language of the commission laws, was not the intention of the legislatures.

Instead of becoming more judicial than the legislatures intended, the commissions have shown a tendency to become less judicial.

FROM the very start the commissions have handled and settled thousands of controversies between utility companies and their customers without the resort to any sort of formal procedure contemplated by the statutes, thus saving the state and the parties concerned an enormous amount of expense and relieving them of the necessity of resorting to the courts. The New York commission, for example, gets over forty of these informal complaints for every working day. Most of them are adjusted through commission action. Sometimes only a single letter is necessary. Often an investigation by the commission staff is required. If it were not for this informal procedure, the person complaining would be dependent for redress upon voluntary action by the companies or forcible action through the courts.

The commissions have also brought about many rate reductions through pressure on utility companies, without resort to formal procedure. The tendency has been away from expensive hearings rather than toward them, but when differences of opinion as to rates and service cannot be settled in this informal way, resort must be had to formal hearings. That is what the statutes contemplate and require.

ABOUT all there is left to consider of the charge that the commissions are "too judicial" is the question whether they initiate enough proceedings on their own hook against the utilities.

The laws provide for formal hearings (1) on the commission's own motion, and (2) on formal complaints by others.

The critics say that the commissions just sit around and wait for complaints as the courts do. That is easy enough to say—but it is not true. That much could easily be proved.

But when the critics say the commissions do not initiate as many formal complaints against the utilities as they should, it is hard to answer them, particularly when they offer no

proof to substantiate that criticism.

In order to sustain the burden of proof of such a charge, the critics should show first of all that commissions have plenty of time to initiate such proceedings. From 1921 to 1928, inclusive, the New York commission entered 11,440 formal orders in proceedings brought before it. That would be 1,430 formal orders a year or more than four for each working day of the year. Some of these orders were, undoubtedly, entered in cases of minor importance but some of them involved elaborate investigations and hearings.

Suppose that a commission has on its calendar fifty cases which it is required by law to hear, because the proceedings were started by formal complaints. Should it postpone consideration of these cases in order to initiate proceedings against the utility companies on its own hook? If it did that, it surely would be criticized. Perhaps the commissions have plenty of idle time on their hands for proceedings on their own initiative, but if they have, the critics should show it. To be perfectly sure of their ground, they might also show that the commissions have ample funds at their disposal to start cases of that kind.

In the second place, the critics should show that the commissions not only have time and money for investigations of that sort, but that there are reasonable grounds for proceeding with them.

For example, Harry R. Booth of the Chicago Bar recently commended the Alabama commission for starting a formal rate proceeding against a utility company on the complaint of a single customer. The statutes do not require that but they permit it. Mr. Booth says:

> "The commission immediately required the Birmingham Gas Company to answer the complaint and then directed its own engineering department to make a careful appraisal of the properties of the gas company. The commission on January 26, 1932, dismissed the complaint, after finding that the company was earning not over 7 per cent upon a value based primarily upon original cost, together with the effect of reduced prices as of September 30, 1931. The point is that the commission placed at the disposal of a single consumer its entire resources."

But there is more to the point than that. The commission in that case undoubtedly thought there was a reasonable ground for making this particular investigation, but after the expenditure of both time and money, found, according to Mr. Booth, that the complaint was without merit and dismissed it. Now, if the commission adopted this procedure on every complaint that it receives, or even without complaint, against every company in its territory, the probability is that

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it would waste an enormous amount of time and money.

Therefore, the critics, in order to show that the commissions are "too judicial" in this respect—that is to say that they are too inclined to wait for complaints, should show that the commissions not only have the time and money for this particular sort of an investigation but that there is reasonable ground for making these investigations. One of the weaknesses of pure theorists is that they fail to take into consideration practicability or expense, especially, it may be observed, expense.

WHEN it comes to rendering the commission decision itself, it would hardly seem possible that the commission could be "too judicial" if by that is meant being fair. Nothing in the statutes which have created the commissions and defined their powers and duties indicates that the legislature intended that the commissions should be partisan rather than judicial in settling controversies between stockholders and their customers. In this connection this excerpt from a court opinion is interesting:

> "The work of the commission is that of regulation between the public and the public utilities operating in this state. In matters over which the commission has jurisdiction, the public, in the initiative steps, should be treated as one party and the utility as the other. We repeatedly hear the expression that it is the duty of the commission to represent the public alone. If, by this remark, it is meant that the commission is organized but for one purpose, that of antagonistic action toward utilities under any and all circumstances, than one of the great purposes of the law, adequate service by the utility at the least cost to the consumer, might be entirely defeated.[4]

[4] *Re* Northwestern Indiana Teleph. Co. 201 Ind. 667, P.U.R.1930D, 143.

UTILITY customers are quite commonly referred to as the public, and utility stockholders as representing merely a private interest. But the stockholder's interest is no more private than is that of utility customers. The stockholders as a group and the customers as a group constitute two private parties with conflicting interests which require settlement in the interest of the public welfare. The public interest is the interest of all of the people of the state. Utility regulation through state commissions is justified only on the ground of public welfare—not the welfare of the customers of a particular utility or the stockholders of a particular utility who, as a group, each represent, as stated, the private interests as distinguished from the public interest.

If the laws were designed solely or even primarily for the benefit of the customers, of particular utilities, then these laws would constitute class legislation of the rankest sort.

Writers seem to think that the customers of a particular utility company constitute the public because they usually outnumber the stockholders. But suppose a single person complains that a utility company wrongfully refuses to extend service to him? That is the complaint of one person representing one side as against perhaps several hundred stockholders representing the other side.

Does anyone suppose the complainant in this case is the public and that the stockholders constitute merely a private party? Certainly not.

THE public is interested in the fair settlement of these controversies just as it would be interested in the

fair settlement of a controversy between private parties in a law suit in the courts, because the welfare of the public is indirectly involved. The public, let it be repeated, is made up of the people of the entire state. It makes no difference how numerous the persons may be on one side of a controversy before a state commission or on the other. They do not constitute the public.

To assume that it is in the public interest that a partisan tribunal should be set up to decide conflicting issues between private parties because one of the private parties happens to consist of a larger number of persons than the other is unthinkable. There is nothing in the commission statutes to justify it. The idea is not only unethical but it would be both futile and expensive. No one would suffer more than the companies' customers if such a policy were adopted.

Instead of making commission procedure final, as it now is in the vast majority of cases, it would throw most of the disputes into the courts and thus double the expense of settling them—a burden which would fall in the end on the shoulders of the customers of utility companies. This resort to the courts is the very thing the critics of regulation profess to deplore.

No, the legislatures did not intend that the commissions should be partisan. If they had there would have been no need for establishing commissions. The legislatures themselves could have fixed rates at a minimum of expense without hearings and without reference to their fairness, passing the buck of square dealing to the courts; but to the honor of the legislatures, they evidently thought that it would not only be more ethical but cheaper in the end to have the commissions investigate the facts in individual cases and render decisions which would be fair both to utility customers and utility stockholders. The facts that in the great majority of cases no appeals have been taken from commission decisions and that, therefore, commission decisions are final, and that capital has flowed freely into the utility field under "judicial" commission regulation which probably would not have been the case if the commissions had adopted the partisan policy urged by the critics, are a very fine tribute to the wisdom of the legislatures in setting up nonpartisan commissions and to the success of that policy in practice in the face of popular clamor and political criticism.

The writer of this article has been cited as viewing the so-called judicial attitude of the commissions with extreme satisfaction. That is correct. He does. To put it mildly, he views the partisan attitude with anything but extreme satisfaction. The partisan attitude is narrow and unethical. It is also shortsighted.

Need the Service Charge Be Uniform to All Domestic Users?

A new angle on an old but ever-controversial subject within the realm of rate regulation will be presented by NATHAN B. JACOBS *in a coming issue of* PUBLIC UTILITIES FORTNIGHTLY.

Who the "Small User" Really Is

The Fact and the Fancy

The "service charge"—long and vigorously assailed by some as an unduly heavy burden upon the minimum user—is playing an important rôle in rate cases. Yet a survey in the gas industry reveals that this minimum user is not exactly the "little fellow" who he is pictured to be. The following article tells who he actually is, as shown by facts and figures.

By CHARLES S. REED

When an electric or gas company attempts to put into effect a rate containing a service charge, the utility is sometimes accused of imposing on the "small customer" for the benefit of the larger user.

To the man in the street the term "small customer" means the average everyday user of gas or electricity, as contrasted with the wealthier few. The utility is hailed before the public service commission and asked to substantiate the proposed charge by means of an allocation of its investment and operating costs. Voluminous testimony and argument is offered by the opponents to show why these costs are not alike per customer and why they should be collected instead at so much per thousand cubic feet.

It is not the intention to discuss cost allocation here. For the purpose of this article it matters not whether the scientifically correct customer cost be 20 cents or $2 a month. A service charge is only one element of a rate for gas or electricity, with the commodity charge forming a much more important part, since even a service charge as high as $1.50 a month will rarely equal 50 per cent of the total bill of the average user. The customers, little and big alike, are interested in their total bills—the cash they pay the utility at the end of each month. Is it better for the little customers if these total bills are made up entirely upon a per thousand basis[1] or if some part of each bill is collected as a fixed monthly charge? Let this question be considered from the viewpoint of the customers. The service charge has been referred to as a means of "jumping

[1] As is recommended by Dr. John Bauer in his article "The Effect of the Service Charge upon the Small User," Public Utilities Fortnightly, March 3, 1932.

on the little fellow."

Just who is this "small user" and how are his total bills affected?

IF the small customer is to be taken as the ordinary everyday citizen, more than 95 per cent of the customers can be called small customers, leaving only the remaining 5 per cent or less as big users. Moreover, when a proposed rate change is analyzed it generally will be found it is immaterial to these big customers whether a service charge is used or not. The conditions under which they use gas are governed by competition and the utility must make a lower price in order to get the business, this lower price being obtained with a block rate just as easily as with a service charge. Thus, for any real discussion of the little fellow and how he is affected by rate changes and by service charges, we can forget the big customer entirely.

When we consider the ordinary everyday small users, the 95 per cent group, we find it necessary to subdivide them into still further classes, to wit: Very small customers, average users, and fair users.

By doing this we can segregate that group of the small customers who can truly be called the little fellows and determine the extent to which they are injured or helped by the installation of a service charge.

THE smallest customers on the lines of a gas company are the high-priced apartments and such semi-industrial users as cigar stores, doctors' and dentists' offices, and places where a meter is installed for emergency service but rarely used.

Surveys in a number of places show that the higher the rent paid for an apartment, the less the gas bill. These higher-priced apartments are occupied by small families whose laundry is sent out, who have electric appliances for toast making and coffee percolating, who dine out considerably and patronize the delicatessen when they are at home, and whose landlords furnish ample heat and hot water. The only exceptions to this rule are those very large apartments in New York city where staffs of servants are maintained; these latter apartments generally use large quantities of gas and may get into the 5 per cent large customer class.

As we descend in the scale of apartment rentals, there is an increased use of gas. Generally the janitor in an apartment building is the largest user in the building. Farther down in the scale we come to those apartments where the landlord is niggardly in supplying heat and the tenant is forced to use his gas stove to a certain extent to help maintain a reasonable temperature in cold weather. Surveys in a negro apartment district have shown variations from 200 cubic feet of gas in the summer to 20,000 cubic feet in a winter month. The less the rent, the greater the use for gas for both space and water heating.

ANOTHER very small user is the family owning a coal range and using gas only as an emergency or summer fuel. The coal stove is in the kitchen as a source of heat and is naturally also used for cooking. Regardless of whether the customer would like to throw out the coal range with its accompanying dirt and ashes, he is deterred from so doing by the high

Classification of Customers of Sample Company

Monthly Gas Bill	*Per Cent of Customers*	*Per Cent of Sales*
VERY SMALL USERS		
Less than $1.50	15 per cent	3 per cent
$1.50 to $3.00	22	12
Subtotal	37	15
AVERAGE USERS		
$3.00 to $5.00 ...	33 "	30 "
FAIR USERS		
$5.00 to $ 7.50 ..	23 "	30 "
7.50 to 15.00 ..	5 "	12 "
Subtotal	28	42
LARGE USERS		
Over $15.00	2 "	13 "
Total	100 per cent	100 per cent

TABLE I

cost of the additional gas which would be required and so is forced to content himself with coal for the general run of work. In the same class with these are many well-to-do customers who cannot afford to use gas for all cooking and water-heating purposes on account of the high bills which would be incurred by careless servants. Examples of this are found even in places like New York where was discovered a public utility holding company official, living in a 3-story house in the heart of the city and using coal for cooking. Many similar examples are also to be found in the South where some of the finest homes are without gas except for emergency service. A negro mammy likes to light the fire as soon as she arrives in the morning so as to have it good and hot by the time she is ready to cook breakfast.

The total of the above groups of small customers generally equals some 30 to 45 per cent of the total residence customers of a gas company. For example, in a company recently analyzed there were 37 per cent of the customers in this class; the total residence customers are divided as shown in TABLE I.

It will be noted the big customers are very few in number, comprising at the most those paying bills in excess of $7.50 per month. This would include only 7 per cent of the customers and, if taken as generally understood by the man in the street, would include only the 2 per cent listed in the table as large users and paying bills in excess of $15 per month.

IN order to use practical figures and avoid theoretical discussions the present gas rate of the sample company just mentioned is assumed to be $1.50 per thousand for the first 10,000 cubic feet per month and $1.30 per thousand for all additional. It is also assumed the company, in order to encourage the use of gas, is willing to make some reduction in revenue but cannot afford a cut of more than 4 or 5 per cent. A number of various forms of rates have, therefore, been designed which will each yield a 4½ per cent reduction when applied to the present sales of our sample company. These rates are shown in TABLE II.

Other rates could be added to this list but these are the principal types.

A straight meter rate to yield the same money would have to be $1.42 per thousand. Such a rate would kill off the sales to the larger customers and so would not be comparable to the three which are shown. A minimum bill could also be introduced in rate A but its effect would be negligible. For example, a minimum of $1 would only bring in enough revenue to permit a cut of 2½ cents in the initial commodity rate, making the rate $1.47½ per thousand. A minimum bill is not worth its salt.

The next step is to show how these rates affect the various groups of customers. This is done in TABLE III, which gives the average bill for each group of customers under the present and each of the three suggested rates.

Rates Designed to Yield the Same Revenue, Based on Present Sales

RATE A—BLOCK RATE

For the first 3,000 cu. ft. per mo., $1.50 per M
For the next 7,000 cu. ft. per mo., $1.30 per M
For all over 10,000 cu. ft. per mo., $.90 per M

RATE B—SERVICE CHARGE AND BLOCK RATE

Service charge, $.80 per month, plus:
For the first 3,000 cu. ft. per mo., $1.20 per M
For the next 7,000 cu. ft. per mo., $1.05 per M
For all over 10,000 cu. ft. per mo., $.90 per M

RATE C—SERVICE CHARGE TYPE

Service charge, $1.55 per month, plus:
All gas at $.90 per M

TABLE II

THE most striking point illustrated by TABLE III is the effect of the three rates upon the average users, those paying bills between $3 and $5 per month. These customers now average about $4.05 and on each of the suggested rates we find them paying about the same, with the advantage slightly in favor of the higher service charge rate. This third of the customers can hardly be called big customers but are average ordinary everyday users. Although the group as a whole shows a slight reduction on the higher service charge rate, some customers in the group will be increased slightly while others will receive small decreases; the maximum increase, however, being less than 30 cents per month. As no customer uses exactly the same quantity of gas each month, many of the customers in this group would have their bills slightly increased one month and slightly decreased another month, or increased this year and decreased next year. For all practical purposes this group can be classed as "not materially affected." To them any of the three suggested rates is practically an even trade. However, with rate C each of these customers would have the opportunity of using additional gas at only 90 cents to replace some other fuel, as compared to $1.20 and $1.05 on rate B and $1.50 and $1.30 on rate A. Thus for this group the best rate is that containing a higher service charge, since present bills will not be affected and the opportunities for further use at reasonable cost are much greater.

THE number of small customers is generally overstated in a rate

case because, on account of the expense involved of adding each customer's consumption for a full year's period, the billing for an average month is used as a basis for analysis. However, the number of bills for any one month does not represent the number of customers on an all-year basis. This holds true for both gas and electric. For example, in a recent rate question figures were supplied for the January and July bills and also for the average use over an entire year's period. Twenty-four per cent of the July bills and 6 per cent of the January bills, an average of 15 per cent, were for less than twenty kilowatt hours. On the other hand, the annual figures obtained by adding each customer's consumption for the twelve months and dividing by 12 showed less than 9 per cent in this class. Many customers will drop down in their use for a single month but maintain a high annual average.

In another case the company's own figures presented before the public service commission show 58 per cent of the bills and presumably 58 per cent of the customers would be increased by a proposed service charge rate. An annual study of this case would have shown that less than a third of the customers would be asked to pay more while another third would be in the twilight zone of those not materially affected.

THERE is another large group of customers in the next block, now paying bills between $5 and $15 per month and with most of them paying less than $7.50. These are the steady home-dwelling families who use gas for both cooking and water heating and who as a rule are the most in need of relief at the present. This group uses more than 40 per cent of the total residence sales. To them a higher service charge means that the total bills, including that service charge, will be substantially less than under either of the other rates. In addition they also have the opportunity of using additional gas at only 90 cents under rate C as compared to $1.05 on rate B and $1.30 on the block rate A.

The last group consists of the few large customers. The service charge has always been held up as a means of discriminating against the many little fellows in favor of the few in this group. Yet we find the block rate giving almost as great a reduction as either of the service charge types. So far as the big customer is concerned, the form of the domestic rate is immaterial.

EVEN when we examine the very small customer group we find the installation of a higher service charge is not much of a burden. For instance the 22 per cent now paying bills between $1.50 and $3 are increased only 58 cents a month through the installation of a service charge of $1.55, and the average bill paid by the members of the group would still be only $2.98, or less than 10 cents a day which, when consideration is given to the convenience and comfort of gas over other forms of fuel, is not unreasonable. In addition, 90-cent gas is offered to these customers for additional use, as compared to $1.50 on the present rate and on A, so they can throw out the coal stoves and rid their kitchens of coal and ashes. They can also make their apartments warm-

Effect of Various Rates on the Customers

Present Monthly Bill	*Per Cent of Customers*	*Average Monthly Bill* — *Present Rate*	*Block Rate A*	*80 Cents Service Charge B*	*$1.55 Service Charge C*
VERY SMALL USERS					
$ 0 to $1.50	15 per cent	$ .90	$ .90	$1.52	$2.09
1.50 to 3.00	22	2.40	2.40	2.71	2.98
AVERAGE USERS					
$3.00 to $5.00	33	4.05	4.05	4.03	3.98
FAIR USERS					
$5.00 to $ 7.50	23	6.00	5.80	5.45	5.15
7.50 to 15.00	5	10.50	9.70	8.60	7.85
LARGE USERS					
Over $15.00	2	28.00	22.60	20.75	19.55
Total	100 per cent	$4.46	$4.25	$4.25	$4.25

TABLE III

er when the landlord fails to do his duty, without incurring prohibitive bills.

So we find that 63 per cent of the customers will be better off with the $1.55 service charge than with the equivalent block rate or lower service charge. Even if the 2 per cent of large customers are not considered, the percentage of those benefited drops only to 62 per cent and if we include as small customers only those paying bills of less than $7.50 per month we still find more than 60 per cent benefited. That is, 60 per cent of the *small* customers are better off with a higher service charge and even the remaining 40 per cent are not badly hurt.

In addition, the very small customers, as well as all the others, are helped by a rate which is promotional in character and tends to build up the sales of the gas company and bring about future rate reductions for all customers. Rate C, with its 90-cent gas available to each and every customer, is very much more promotional than the present rate or either of the other suggestions. For example, on the present rate only the 2 per cent of big customers can get additional gas at less than $1.50 a thousand and this same 2 per cent of big customers are the only ones who get the 90-cent rate on either A or B. A block rate favors the big customers about as much as a service charge and has no compensating lower commodity charge to offer the smaller users.

More than 60 per cent of the customers use less than 3,000 cubic feet per month and, therefore, on rate A would have to pay $1.50 per thousand for some gas before even getting into the $1.30 block.

If the thousand-cubic foot customer wants to use an additional 2,000 cubic feet to replace a coal range, run a gas refrigerator, install a water heater or operate one already installed, or add a little heat in cold weather, he can do this on rate C at a cost of only $1.80 a month, compared to the present cost of $3 or $3 on the block rate A. If he happens to be already using 2,000 cubic feet, the cost of the additional 2,000 will be $1.80 on rate C compared to $2.80 on rate A (1,000 at $1.50 and 1,000 at $1.30), and $2.25 on rate B (1,000 at $1.20 and 1,000 at $1.05). Multiplying the cost of an additional 2,000 cubic feet for each group of customers by the number of customers in that group gives a weighted average cost on the present rate of $2.99 compared to $2.74 on rate A, $2.21 on rate B, and $1.80 on rate C. Thus we find the $1.55 service charge rate is four to five times more promotional than the block rate containing no service charge.

At this point it might be well to see what one authority has to say in regard to this promotional quality.[2]

> "If the costs described by proponents of the service charge as due to customers, are apportioned on a commodity basis, and a favorable block system is introduced, so that in the higher blocks a smaller proportion of these costs is allocated per unit, then there is a real inducement to consumers to move from a lower block group to a higher.
>
> "But if a service charge keeps these costs from the commodity rates, there is to that extent less divergence between the lower and the higher blocks, and thus less inducement to increased consumption."

Applying the reasoning to the examples in this case, the customer supposedly is induced to use additional gas on the block rate A at $1.50 and $1.30 per thousand in order to move up into the 90-cent block, whereas with the combination service charge and block rate B there is less divergence between the lower and the higher blocks, only 15 cents between each price, and thus less inducement to increased consumption. Under this idea, when we continue on to rate C with its single uniform price for all gas, there would be no inducement to increased use. The fallacy of such reasoning becomes apparent when we remember that very few gas customers have any idea of what their gas rate is and in what consumption block their own use is located. They do know, however, how much a new appliance increases the total bill and form their judgment of the desirability of that appliance according to the additional cost. The higher the service charge the greater the promotional quality of the rate and the better the chances of all customers for future rate reductions.

The customers as a whole are interested in good public relations between the company and customers. When a service charge is not understood it hurts these relations but if more service charges are installed with such compensating reductions in the commodity rates as to bring out the real purpose of the fixed charge, the objections will dwindle. The public always objects to a new idea. For

[2] Dr. John Bauer, in PUBLIC UTILITIES FORTNIGHTLY, March 3, 1932.

The Higher the Apartment Rent, the Lower the Gas Bill

"SURVEYS *in a number of places show that the higher the rent paid for an apartment, the less the gas bill. These higher-priced apartments are occupied by small families whose laundry is sent out, who have electric appliances for toast making and coffee percolating, who dine out considerably and patronize the delicatessen when they are at home, and whose landlords furnish ample heat and hot water.*"

example, in New York city the present water rates consist entirely of service charges varied according to the number of taps and other details. It has been suggested several times that meters be installed and the water business put on the same basis as the electric and gas in order to cut down the waste of water occurring under the present system. Predictions have been freely made by the politicians that if this is attempted riots will occur, for the people will not stand for the installation of meters. In other words they will insist upon retaining the very feature to which some now object when embodied in an electric or gas rate.

ONE of the prime causes of complaint in the gas business is the variation of bills from month to month due to various conditions. Often a customer who averages 3,000 cubic feet per month will use 1,500 feet in the summer time and 4,500 cubic feet in the winter. On the block rate A proposed for our sample company the bill of this customer would vary from $2.25 in the summer time to $6.45 in the winter, a swing of $4.20 or 187 per cent. On the combination rate B this variation drops to 130 per cent and on rate C the summer bill becomes $2.90 while the winter bill is $5.60, a difference of $2.70 or only 93 per cent although the difference in use is 200 per cent. Thus an increase in the service charge, with its corresponding decrease in the commodity charge, means less variation from month to month and, therefore, less high bill complaints and better public relations.

Unfortunately the good which is done by the service charge has been obscured in many recent rate cases by the attention given to cost allocation and the attempts to determine the customer cost to serve a single residence customer. The effect upon the actual bills of the customers was lost sight of in the argument over how the various items of cost should be allocated. The practical result was swamped by a maze of theory. For example, in the minority opinion in the Brooklyn Union Gas Case, the Ward Baking Company, a big customer, was compared to 5,000 laborers who together

used about the same total amount of gas. The opinion pointed out that if 50 per cent of certain fixed costs were charged as customer costs and distributed equally among the customers, these 5,000 laborers would pay 5,000 times as great a share of this part of the expense than the Ward Baking Company. The assumption was taken that the 5,000 laborers would thereby be greatly injured, all for the benefit of the Ward Baking Company. Actually, a little further investigation into the matter would have shown that the laborers would have benefited considerably if 100 per cent of the cost item in question, instead of merely 50 per cent, had been charged as a customer expense. It is true the customer cost element would have increased but every penny that goes into the customer cost comes out of the commodity cost and the total share, i. e., the actual monthly gas bills paid by the laborers would have been decreased instead of increased.

IN connection with this question of cost allocation reference is sometimes made to the formula of the American Gas Association for determining customer cost.

There is no such formula.

As a member of the committee which made the report from which the formula was supposedly taken, I am prepared to say the percentages used were not intended in any sense as applicable to all gas companies, but were illustrations to guide executives in performing similar allocations of their own company costs.

AN interesting method was followed recently in order to determine how the poor man was affected by different rate forms. A taxi driver was asked to select a portion of the city occupied by the working class. On arriving several streets were selected as typical of the district. Then, *and not until then,* the books of the gas company were examined and a record made of the annual consumption and bill of each and every customer on those streets. The application of various rates to these customers showed that each street would benefit as a whole if a service charge rate of $1.80 were used and a substantial majority of the individuals on these streets would save money on service charge rates with this saving increasing as the charge was increased.

I have made somewhat similar studies in various cities and towns in a dozen or more states ranging from Montreal to Florida and from Seattle to the eastern coast and have always found that the average everyday citizen, who is the real small customer deserving the most consideration, will be benefited by the introduction of a service charge and the higher that service charge, within certain limits of course, the more he will be helped.

THE service charge rate is the best rate for the small customers in that it benefits the majority of the "small customers"; it offers the poor man a chance to make his kitchen as free from soot and ashes as the kitchen of the wealthiest man in town; it builds up the gas business instead of strangling it, thus tending toward lower future rates for all customers; it tends to equalize winter and summer bills, thus cutting down bill complaints; and it accomplishes this without being a burden on any customer.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JAMES C. BONBRIGHT
Professor of Finance, Columbia University.

"There is good reason to believe that either universal public ownership or universal private ownership would be a misfortune."

MORRIS LLEWELLYN COOKE
Engineer.

"Bonded as they (the railroads) are to the hilt, and with no market for their stocks, the solution will inevitably be public ownership."

HENRY W. ANDERSON
Special counsel for the Baltimore and Ohio Railroad.

"It is estimated that for 1931 the total taxes paid by corporations will equal if not exceed the aggregate of corporate income before taxes."

H. P. LIVERSIDGE
Vice president, Philadelphia Electric Company.

"It is the economic and not the artificial unity of the territory which must be considered when the supply of electrical energy is being dealt with."

GEORGE T. BUCKINGHAM
Vice president, Illinois Power and Light Company.

"Many observers, and I am one of them, believe that two thirds of all those new activities in the government departments could be discontinued tomorrow without any adverse consequences to the inhabitants of the United States."

HOWARD BRUBAKER
Magazine columnist.

"The telephone company mourns the loss of 80,000 customers in the state (of New York) this year. But wouldn't it be wonderful if they should turn out to be all the existing wrong numbers?"

ED HOWE
Newspaperman and philosopher.

"The reformers formerly talked grandly about squeezing the water out of railroad stocks. It has been accomplished, but every farmer, business man, banker, wage earner, home owner, widow, and orphan child, has been compelled to stand the squeeze also."

SAMUEL O. DUNN
Editor, "Railway Age."

"That a means of transportation which is strictly regulated and is not subsidized loses traffic to a means of transportation which is not comparably regulated and is subsidized, is certainly no evidence of the superior economy and efficiency of the unregulated and subsidized means of transportation."

The "Therm Basis" of Gas Billing

(As Seen by a Utility Commissioner)

How it differs from the ordinary volume method of selling gas, and how it affected the customer relations of some utility corporations which experimented with it.

By HOWELL ELLIS.
PUBLIC SERVICE COMMISSIONER OF INDIANA

'Twas brillig, and the slithy toves
Did gyre and gimble in the wabe,
All mimsy were the borogoves,
And the mome raths outgrabe.
—"JABBERWOCKY," by Lewis Carroll.

JABBERWOCKY jargon is perhaps as intelligible to the average user of utility service as is the therm basis of billing for gas.

This statement is no reflection on the intelligence of gas consumers. But it is an indictment of the therm basis of billing for such service.

Perhaps gas consumers could understand the therm basis of billing for gas as readily as utility experts, if they so desired, but when even in the face of extensive educational campaigns, consumers still fail to grasp the intricacies of the therm basis, why should gas utilities persist in attempting to urge upon an unwilling public schedules on the therm basis?

What is a therm? What is the therm basis of billing for gas service? Without becoming too technical I believe these questions should be answered here.

IN connection with my duties as a public service commissioner I conducted a statewide investigation of the therm basis of billing for gas service. I learned that a therm is 100,000 British thermal units, or the quantity of heat required to raise one gram of water from 15 to 16 degrees centigrade, or a lesser-calorie, or a water-gram-degree centigrade.

These definitions may mean much to a scientist or to a gas expert. They do not mean anything at all to the average gas consumer.

The therm basis of billing for gas service is billing for the heat content of gas. Under the volume method of selling gas generally in vogue

throughout the United States, at this time, the gas is measured by a meter recording the number of cubic feet used, and the billing is made on the consumption of cubic feet. Under the therm basis, the volume of gas is still measured by a meter on the cubic foot basis and then converted into therms by use of a multiplier, dependent upon an established British thermal unit content of the gas.

The actual heat content of the gas can be determined only by use of a device known as a "calorimeter."

There are essentially two kinds of calorimeters for measuring the heat content of gas, the "Junkers" type, and the recording type. The "Junkers" type of calorimeter requires a computation with each test. The recording type makes a continuous record on a chart of the heat content of the gas. Both types operate on the heat exchange basis. The calorimeter, however, plays little part in the therm basis of billing for gas service as it is applied to the consumer, for an assumed British thermal unit content of the gas is established in connection with therm rate schedules.

INASMUCH as gas meters record cubic foot consumption only, which must be converted into therms, it is interesting to call attention to an apparent inconsistency in the attitude of utilities generally in representations as to the cost of clerical work in billing for service. Water is quite generally sold on schedules established on a gallon basis. Water meters record cubic foot consumption. It is necessary for a water utility with a schedule on a gallon basis to convert cubic feet recorded by the patron's meter into gallons in order to make out the bill. I know of instances where water utilities have asked to change from a schedule on the gallon basis to a schedule on the cubic foot basis, because of the alleged expense incurred in the office of the utility in converting cubic foot meter readings into gallons.

In connection with the therm basis of billing for gas service, although the meter records cubic feet and it is necessary to convert cubic foot readings into therms, in order to arrive at the amount of the bill, the utilities minimize the expense required in the office to complete such computations. The mathematical processes are much the same in either case.

I have heard representatives of water companies seriously contend that the cost of converting cubic feet into gallons is a considerable item of expense in the preparation of consumers' bills. On the other hand, I have heard representatives of gas utilities contend with equal earnestness that the cost of converting cubic feet into therms is a negligible item in connection with billing expense. Personally, I am inclined to the belief that the cost of making either of the conversions referred to is a small item of expense. But, whether the added billing expense, by reason of converting cubic feet into therms be large or small, it is an added burden to the operating expense of a gas utility when the therm basis of billing for service is used.

ADVOCATES of the therm basis compare the sale of gas on the volume and therm basis with the sale of bananas by the dozen and the

pound. It is pointed out that it is not fair for a vendor to sell bananas by the dozen when they vary in weight, and it is asserted that the weight of the bananas is the correct measure of the amount of the bananas purchased. It is contended that likewise the fair way to sell gas is to sell the heat content of the gas and not the volume.

This illustration has merit. However, in applying the banana illustration to the sale and billing of gas to the consumer on the therm basis, there is a fallacy. In analyzing the comparison, we find that the banana vendor does not weigh one banana out of twelve and then declare the weight of this banana an average weight. He does not then count out twelve bananas and multiply the weight of one by twelve to obtain the weight of twelve, and then arrive at the selling price of a dozen bananas by applying the price per pound. The banana vendor actually weighs the dozen bananas and knows exactly how much they weigh after this operation.

In computing the consumer's bill for gas on the therm basis the utility does what the banana vendor does not do. An average British thermal unit content per volume for the gas is preëstablished. The gas is then measured by volume and the average British thermal unit content applied to calculate the therms used.

The British thermal unit content of the gas cannot be held constant. Since the measuring is done on the volume basis, and not on the therm basis, the consumer is, in the final analysis, buying a certain volume of gas and not a definite amount of heat.

THE movement to introduce the therm method of billing for gas service in the United States today may be likened to the movement to introduce the metric system of weights and measures.

When properly applied with a constant British thermal unit content of the gas, no one questions the scientific accuracy of billing for gas service by the therm method. Furthermore, the therm method of billing for gas service is in use in England. Similarly, no one questions the scientific accuracy of the metric system of weights and measures. Furthermore, it is in use in Europe. But the people of the United States have not seen fit to adopt the metric system of weights and measures, because they are used to and are satisfied with the present system.

The advocates of the metric system would have us dealing with meters, millimeters, centimeters, and kilo-

¶ "ADVOCATES *of the therm basis compare the sale of gas on the volume and therm basis with the sale of bananas by the dozen and the pound. It is pointed out that it is not fair for a vendor to sell bananas by the dozen when they vary in weight, and it is asserted that the weight of the bananas is the correct measure of the amount of the bananas purchased. It is contended that likewise the fair way to sell gas is to sell the heat content of the gas and not the volume.*"

meters; with grams, kilograms, milligrams, and centigrams; and with liters, decileters, dekaliters, and hectoliters. We are used to dealing with inches, feet, rods, and miles; with ounces, pounds, and tons; and with pints, quarts, and gallons. (Especially in these latter days with pints, quarts, and gallons. Can you imagine the Tired Business Man telephoning to his bootlegger to bring around a liter of Scotch, or a prohibition agent reporting to his superior a raid which netted several hectoliters of alcohol?)

IT is usage, after all, which makes any system of measurement or billing familiar and understandable. In my opinion, the consumers of the United States are no more willing at this time to accept the therm method of billing for gas service than they desire to adopt the metric system of weights and measures. I am told by utility representatives that eventually we will come to the use of the therm method of billing for gas service. Even if this prediction is true, certainly, I am of the opinion that the time is not now ripe for the introduction of the therm basis of billing for gas service in the United States.

JUST why have many gas utilities recently urged the adoption of rate schedules on the therm basis? There are doubtless many reasons for such action. Three of the more persuasive arguments on behalf of the therm method which have come to my attention are as follows:

1. The therm basis of billing for gas service is regarded by many leaders of the gas industry as the most scientific and modern method of billing for such service.

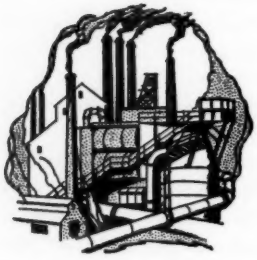
2. The therm basis of billing for gas service has been adopted by some utilities as a part of a definite program arrived at by utility executives after consideration of the problems confronting the gas industry at this time.

3. The therm basis of billing for gas service is regarded by utility executives as the best method of maintaining present revenues for gas utilities serving a gas of low heat content, when and if natural gas or other gas of high heat content should be served to consumers.

WITHOUT accepting the assertion of utility representatives that the therm basis of billing for gas service is the most scientific and modern method of billing for such service, it may be readily conceded that when properly applied, with a gas of constant heat content, the therm basis of billing for gas service is at least as scientific and accurate as the cubic foot basis of billing.

The trouble here lies with the fact that schedules based on the therm basis assume that gas of a certain heat content will be served at all times. Eliminating the difficulty of maintaining a constant heat value of gas the fact still remains that the consumer is dependent upon the statement of the utility as to the heat content of the gas furnished him. The consumer has no calorimeter, and if he desires to determine the heat content of the gas, he must go to the plant of the company, observe its calorimeter, if it be a recording one, obtain the readings for the entire month for which he has been billed and determine whether he has received gas of

How One Experiment in Therm Billing Terminated



"THERM rates were put into effect in a large number of cities and towns in the state of Indiana for a time, largely as optional rates. Such a storm of protest arose from gas consumers that the commission deemed it necessary to institute an investigation. . . . The result of the investigation in Indiana was an order from the commission canceling all therm basis schedules and directing the utilities to restore their cubic foot basis of billing for gas service."

the heat content claimed by the utility. Obviously, such a procedure is both impractical and impossible for the average consumer.

Therm basis advocates counter with the suggestion that when gas is sold on the cubic foot basis the consumer is equally dependent upon the representations of the utility as to the heat content of the gas furnished. In such case, however, the gas is not actually sold on a heat content basis, but by volume.

GAS utilities in many sections of the United States are facing serious problems as the result of the advent of large quantities of natural gas from distant gas fields. Interstate pipe lines are knocking at the very doors of scores of cities and towns now served by artificial gas utilities. Also, in some sections of the country, large amounts of high heat content gas, manufactured as an industrial by-product, have become available. It is generally believed that such high heat content gas can be served to consumers at a lower cost than artificial gas, and that such high heat content gas is more desirable. Whether this be true or not, many consumers (particularly large industrial consumers) are clamoring for natural gas service, and this situation has motivated many utility executives in deciding on proposing the therm basis of billing.

When and if such high heat content gas is furnished to consumers, the consumption by volume of an individual consumer generally decreases, with a resultant decrease in the revenues of the company. It has been the desire of the gas utilities to convert present cubic foot schedules into therm schedules, so that the consumer will pay the same bill for the same amount of heat which he formerly received on the cubic foot basis, with a larger volume of gas.

IT is the contention of the utilities that they cannot serve high heat content gas in the place of 570 B.T.U., or lower heat content gas, without the protection to the earnings of the utility given by the therm schedules or an adjusted cubic foot schedule.

I know, however, of instances where high heat content gas is being served at the cubic foot rate schedule under which 570 B.T.U. gas was formerly sold. In these instances, although the volume consumption of the average consumer was considerably reduced by the advent of the high heat content gas, the total volume sales of the companies are beginning to approximate total volume sales of 570 B.T.U. gas because of wider industrial and other uses.

Therm rates were put into effect in a large number of cities and towns in the state of Indiana for a time, largely as optional rates. Such a storm of protest arose from gas consumers that the commission deemed it necessary to institute an investigation on its own motion into the reasonableness of billing for gas service on the therm basis. In connection with this investigation the commission made a study of the therm basis of billing as it had been applied in Indiana.

ALTHOUGH an intensive educational campaign had been carried on by gas utilities desiring to acquaint their consumers with the therm method, investigators for the commission found only one man, excepting utility employees and rate experts, who understood the therm basis of billing for gas service, as it had been applied in Indiana.

While it is undoubtedly true that there were other consumers who understood the therm basis of billing, out of the thousands in the state of Indiana who were served under it, certain it is from the evidence submitted in the investigation conducted by the commission, that the average domestic consumer does not understand the therm method of billing for gas service.

The result of the investigation in Indiana was an order from the commission canceling all therm basis schedules and directing the utilities to restore their cubic foot basis of billing for gas service.

In instances where high heat content gas had been introduced under therm schedules, revised cubic foot schedules were put into effect so as not to impair the revenues of the utilities. It may be said here that these revised cubic foot schedules have met with little or no opposition, whereas the preceding therm schedules aroused the opposition of thousands of consumers.

IT is my opinion that the simplest rate schedule is the best schedule for the utility and for the consuming public. Difficulties with rate schedules begin when the consumer does not understand them. Personally, I have no use for complicated rate schedules, be they for gas, electric, or any other kind of utility service. Public relations are best when the consumer understands how and what he is paying for his utility service.

Rate schedules for gas service on the therm basis are not simple; they are not conducive to good public relations, and they are, therefore, contrary to the best interests of both the consumers and the utility.

How will the new tax laws affect the utility industry? The question will be answered in a coming issue of this magazine by HERBERT COREY, *who has made a comprehensive survey of the electric, gas, and communications services.*

Why the Coal Industry Needs Federal Regulation

Do the same arguments which led to the creation of regulatory agencies to control public utility corporations now apply with equal force to the establishment of commission regulation of the bituminous coal business? Congressman Kelly believes they do—and for reasons which he states in the following article.

By CLYDE KELLY
UNITED STATES REPRESENTATIVE FROM PENNSYLVANIA

THE purpose of the Sherman Antitrust Law was sound and worthy. During the period of its enactment monopolies were being formed to control all sorts of necessary business, and they were oppressing small producers and robbing consumers. It was necessary to act in public interest. Soon after the enactment of the Sherman Law, however, and the subsequent enactment of the Clayton Act and related legislation, the courts began to interpret these antitrust laws. Under these interpreted decisions, many of them years old, even natural and sane agreements to prevent the waste, surplus, and destruction in the operation of some of our basic industries have been outlawed as forbidden conspiracies.

In addition to this, business conditions have changed a great deal since the period during which the antitrust laws were enacted. Today we find that if excess production is not limited by some kind of an agreement, it will be limited to the demand only by destructive competition. Soon the state and Federal governments realized the fact that the enforcement of the antitrust laws in the case of public utility service was not in the interest of the public and more than likely to be positively contrary to it. Competition might very well be the life of trade in the average run of business, but two telephone companies operating in the same community soon proved to be an obvious nuisance. Duplicate facilities made necessary by competitive gas and electric utilities in the same area likewise were shown to be an expensive economic waste.

SO we exempted our utilities from the operation of the antitrust laws. Recognizing their inherent monopolistic character, we placed

them under the special supervision of regulatory agencies. The states created the public service commission. The Federal government had already created the Interstate Commerce Commission, and soon after created the Federal Power Commission. Now the question arises whether the same arguments based on destructive competition which compelled us to place our utilities under the supervision of regulatory agencies, where guarded territorial monopolies would not be forbidden but would be actually required, do not apply with equal or greater force to the present condition of the bituminous coal industry.

I believe that the condition of that industry does warrant such a conclusion and I have introduced in the current session of Congress, in coöperation with Senator Davis of Pennsylvania, a bill (H. R. 7536) which would in general terms:

(1) Provide for the creation of a Federal commission to regulate the bituminous coal industry.

(2) Require all companies engaged in the interstate coal business to be licensed and controlled by this commission.

(3) Legalize among coal producers the formation of pools and joint selling agencies provided they are not against the public interest.

THE bill does not provide for specific rate fixing by the commission because I believe it is a wise policy to permit regulation of price and production through organization within the industry approved by the governmental agency which counsels with them, guides them, and safeguards the interest of workers and the public.

What we need in the coal industry are combinations in control and so supervised by public authorities that they cannot be used for discrimination or oppression, but must advance in public interest. Only in this way can we hope too to make the organized coal industry responsible for the well-being of its great army of mine workers. There is ample justification in this for loosening the restriction of the antitrust laws as applied to this great natural resource.

UNDER present conditions waste of coal is inevitable. The industry is defenseless against overproduction caused by cruel and destructive competition. Coal has been produced and sold at prices below the cost of production and the great natural resource has become an economic loss. It is the bankrupt route to low prices and that in the end is a most dangerous pathway for the public.

My purpose is to legalize agreements to reduce surplus and restrict output of coal; agreements to stabilize prices to provide a fair return to the producer as well as fair wages to the worker and a fair price to the consumer, just so far as the commission determines will be in the public interest and not oppressive. Today such an agreement between coal producers to limit production or to establish a stabilized price would be violative of the antitrust laws.

LAST December the National Coal Association in a New York conference approved of a regional sales agency plan. I placed that agreement in the *Congressional Record* during a speech delivered on the floor of the House last January. Because the plan would necessitate a modification

of the present application of the Sherman Antitrust Law, it was referred to the Department of Justice. That department issued the following statement early in February:

> "It is stated at the Department of Justice that full appreciation is felt for the distressing condition of the coal industry and the department desires to coöperate with the operators in every way in any plan to aid it that is in the public interest and within the law, but those promoting the regional sales agency plan ought to proceed on the understanding that they must either obtain legislation permitting it or face litigation to test its legality. The operators have indicated their desire to have their plans tested in the courts. The department will coöperate to its utmost to have the questions speedily settled by the courts."

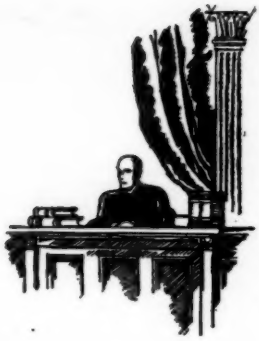
The bill which I have introduced meets the suggestion of the Justice Department. It will legalize the regional sales agency contract. With its passage expensive and protracted litigation would be unnecessary. For these reasons I feel that the vast majority of coal operators are heartily in accord with the proposed legislation.

THERE is another provision of the proposed law, not mentioned in the above summary, which reserves to mine workers through collective bargaining a voice in the determination of their share in the joint product. Every right given the workers is counterbalanced by a right given to the operators. Neither the employer nor the employees are to become the master, but with equal rights and equal protection they are given the opportunity to work together for their own interests and the interests of the public. These provisions, which are in conformity with the policy announced in the recent passage of the Injunctive Relief Bill to outlaw the infamous "yellow dog" contracts, are only the fundamental rights of workers. Those who reject these sane and conservative provisions are fighting for industrial feudalism. They are fighting against an irresistible trend. American wage workers will not accept the conditions of serfs.

TO make less difficult negotiations between employers and employees, the bill provides that the operators either through their own corporations or through a federation of corporations may deal with employees collectively through representatives of their own choosing. The mine workers are given a similar right. If any of these rights are interfered with, the commission is empowered to eliminate such interference.

It is provided, however, that if an individual corporation, not a member of a marketing pool or joint selling agency, desires to employ only unorganized mine workers, he will be protected in that right as long as his employees are left at liberty to terminate their employment and join a labor organization. The commission will be given express power to prohibit the use of yellow dog contracts or anything similar to them in nature.

These simple labor provisions are in accordance with enlightened opinion and customary practice in the industry. None of the regulations thus imposed upon licensees as safeguards to their employees can be reasonably said to destroy property rights or impair a contract obligation. Under the provisions of the proposed law, operators are free to employ only nonunion miners, but they cannot have them contract away their rights at will to join a lawful labor union.



Current Regulatory Problems

BEFORE THE STATE COMMISSIONS

A summary of the replies received from a questionnaire sent by PUBLIC UTILITIES FORTNIGHTLY to the regulatory bodies in the United States.

WHAT are the outstanding regulatory problems with which the state public service commissions are wrestling these days?

What sort of new legislation have they in mind?

What have they to suggest in the way of reform in utility policies?

IF we could get the answers to these questions we should know what is going on along the commission front. There may be much in progress there, or there may be little. But be there much or little, news of any sort from the firing line is always interesting and valuable.

A short time ago PUBLIC UTILITIES FORTNIGHTLY addressed letters to the chairmen of various public service commissions asking them these three questions:

1. *What are the three outstanding regulatory problems in your state?*
2. *What are your recommendations for legislation?*
3. *What are your recommendations for reform in public utility policies?*

The answers, grouped state by state around the three questions, were as follows:

1. What are the three outstanding regulatory problems in your state?

CONNECTICUT

(a) Regulation of rates, particularly those of water and electric companies.

(b) Accounting and general regulation of bus and taxicab operation.

(c) Increasing number of complaints growing out of present economic conditions, and

general agitation against the utility industry; also problems which tend to safeguard or permit the continuance of steam railroad operation.

Maryland

(a) The extension of rural electric lines into communities not now served, together with the establishment of rates for service in such communities.

The state of Maryland is pretty well covered with electric light and power lines, but there are some districts into which companies are reluctant to go because of their sparsely settled character. Under the present law the commission cannot require the extension of a line unless it can be shown that it will yield a profit. The Maryland commission meets this situation largely by negotiation. There is considerable to be done along this line, and this gives the Maryland commission more concern than almost anything else.

(b) The problem of securing generally lower rates for electric service for rural consumers.

The commission is now engaged on an appraisal on the property of a company with a view of reducing rates and when that is finished the company will undertake the appraisal of another company for the same purpose.

(c) The regulation of taxicabs in Baltimore city. This situation is acute. The Maryland commission has been working on that since early in November, putting into effect a law which became operative on January 1st. Rules for the regulation of the business have been adopted. These rules have the effect of law.

Massachusetts

(a) Regulation of rates applicable to smaller users of electric power.

(b) The simplification of the procedure of the regulation of rates generally.

(c) The requiring of adequate provision for depreciation on the part of public utilities.

Nevada

No outstanding problems confront the Nevada commission at the present time other than those which arise in cases that come before it in the general field of utility regulation.

North Dakota

(a) The fixing of rate schedules which will develop the greatest possible load and still be nondiscriminatory.

(b) The limits to which service should be extended free of charge to the consumer.

(c) The relation of holding companies to operating companies.

Ohio

(a) Enforcement of motor transportation regulation.

(b) The establishment of definite rules for determining depreciation.

(c) Elimination of delay in rate hearings.

Utah

(a) The regulation of carriers of persons and property by motor vehicles over and upon the highways.

(b) Coördination of rail and motor vehicle transportation.

(c) Adjustment of rates for carriers of the products of the primary industries of the state, during times of economic stress.

Virginia

(a) Regulation of motor bus operation.

(b) Defining the limits of interstate regulation against state regulation.

(c) Control of holding companies.

Washington

(a) Regulation of auto trucks. The truck problem in Washington is doubtless the same as in other states. The state has built a very extensive system of improved highways and now finds that it has brought into being an irresponsible, unregulated competition that is threatening to destroy the established transportation systems. The only legislative restraint on this competition is the certificate law, passed in 1921 and covering the common carrier trucks and stages operated on a regular route. The statute is adequate to prevent large well-financed concerns from carrying on illegal operations, but it has proven to be slow, costly, and rather ineffective as to small one-truck outfits. The strictly private carrier or the owner transporting his own goods, such as a gasoline company, is totally free from regulation. These latter take more freight from the railroads and the certified truck carrier than do the illegal common carriers.

(b) Rural electric service. Although the National Electric Light Association 1930 statistics estimate that 41,653 farms in the state, or 58.4 of the total, are served with electricity, the need for a more liberal electric line extension policy has been strongly stressed by the department. The farmers not

now using electricity want service but the excess costs of line extensions, which, under present rules, are charged to the users, are in many cases beyond their ability to pay. It is reasonable to assume that the most accessible and profitable territory in the state is now being served.

(c) The small isolated electric system. Approximately 90 per cent of the people and area of the state of Washington receive service from five large electric public service companies and two large municipal electric systems under rates that are fairly uniform. The remainder are served by a number of small isolated systems, nearly all of which have rates in excess of the general level. The consumers in such territory are naturally dissatisfied. These smaller utilities, however, cannot operate at lower rates and earn a reasonable return. This particular problem is of some concern to the department, and to date it has not been able to develop a satisfactory solution.

It is well recognized that the prosperity of cities and other populous centers, particularly in agricultural districts, is largely dependent upon the progressive development and prosperous condition in the rural territory. The placing of electricity in these territories is a very important factor in any future development. It is the view of the Washington Department of Public Works that the cost of making further line extensions into the rural districts should, at least in part, be covered by the rate charged throughout the entire territory served, thus lessening the burden on rural users.

West Virginia

(a) The adoption of a simpler and less expensive method of rate investigation where valuations are involved. This would more readily meet changing economic and social needs and still conform to the liberal spirit of sound legal principles. Such a method would serve to deliver valuation investigations from the labyrinth of technicality into which they are being led by the blind conformity of utility experts to the latter instead of the spirit of judicial interpretation of regulatory procedure.

(b) The need for legislative authority to determine the necessity and propriety of the construction, sale, transfer, or merger of public utility plants, and to enable the commission to supervise the methods of financing them.

(c) The necessity for devising and using some means of informing citizens as to the fundamental principles of utility regulation and of acquainting the public with the functions of the state commission and the work it is doing.

Wyoming

(a) The regulation of state and interstate rates for transportation of commodities and persons by common carriers—railroads, motor vehicles, airplanes, pipe lines.

(b) The regulation of rates for electric power.

(c) The regulation of rates for telephone service.

2. What are your recommendations for legislation?

Connecticut

Generally speaking, there is too much regulatory legislation, and possibly too little discretion vested in the commission as an administrative board. Such discretion as is vested in the commission should not involve managerial powers of utility companies. Legislation should be enacted giving regulatory commissions jurisdiction over both bus and motor truck operations. This would require both state and Federal enactments applicable to both intrastate and interstate transportation.

Maryland

The commission has in mind no recommendations for changes in the law to submit to the next session. The Maryland general assembly has been very generous in giving the commission all the legislation asked for in the last few years for improvements in the Public Service Commission Act. The commission believes itself to be in excellent shape. Therefore, unless some new problem arises prior to the meeting of the general assembly, new legislation will not be asked for. The only bill which the commission desired which failed to pass was one giving the commission more certain authority over holding companies. As the decision of the Supreme Court in the Illinois Bell Telephone Case gives the commission all it could have secured under the legislation asked for, and even more, the commission will not press that particular bill again.

Massachusetts

Only two recommendations have been made by the Massachusetts Department of Public Utilities to the legislature this year.

(a) To prohibit gas and electric companies from lending their funds without approval of the department, and

(b) A bill, which is local in its nature, relating to the power of local communities to require the burying of wires.

NEVADA

The Nevada commission has in mind endorsing the Wisconsin plan of requesting public utilities to participate in the cost of commission regulation. This would be accomplished either by legislation or after conference with the railways and public utilities and the adoption of a formal resolution to cover the agreement. Nevada is small in population and resources, and if the efforts of the commission in this direction should prove successful, it would enable the commission to employ an all-around engineer and statistician which it is particularly in need of at the present time; also a necessary expert assistant in the preparation of cases for submission to the commission and to the Interstate Commerce Commission. With the limited force of one full time commissioner (the chairman), one secretary, one assistant secretary and stenographer, and two part-time commissioners, the work of the commission is entirely too heavy in the first place, and in the second it causes too much delay in the work of the commission.

NORTH DAKOTA

Either state or Federal legislation giving some regulatory body definite control of holding companies.

OHIO

More complete unification of laws applicable to secretary of state, highway department, and public utilities commission.

UTAH

(a) The enactment of laws, placing all forms of transportation on a fair competitive basis, including the regulation of interstate automobile truck and passenger service.

(b) Laws permitting the utilities during prosperous times and conditions to build up larger services, so as to enable them to provide service without impairment and at lower rates during times of economic stress.

(c) Providing for taxation and regulation of all municipally owned and operated utilities so as to place them on a parity with privately owned and operated utilities.

WASHINGTON

The department of public works of Washington has not as yet formulated anything to submit to the legislature. The department has little confidence in legislation that would place private carriers under a species of rate regulation. In the opinion of the department, that problem will have to be met by a high license fee or a ton-mile tax.

WEST VIRGINIA

Amendments to existing laws:

(a) To confer authority on the commission to determine the public necessity and convenience to be served by the construction, sale, transfer, or merger of public utility plants and to supervise the methods of financing them.

(b) To provide a system of public instruction on regulatory subjects in our state colleges and high schools.

Existing legislation might also be strengthened by minor amendments to the commission act, but the present law is fairly satisfactory to the commission.

WYOMING

(a) Congressional legislation relative to motor vehicles, pipe lines, electric power, and telephone lines, so as to give state commissions interested jurisdiction in hearings relative to rates similar to the provisions in the Parker Motor Vehicle Bill.

(b) Legislation to preclude the Federal courts from interfering with state commission decisions relative to intrastate rates.

(c) Legislation giving state commissions authority to regulate interstate gas rates charged by interstate pipe lines to distributing companies. At present too high an interstate rate results in excessive charges to the consumers. Evasion is effected by the use of separate companies owned by a parent or holding company.

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3. What are your recommendations for reforms in public utility policies?

CONNECTICUT

Any legitimate corporate policy would be wise which would result in preventing the invasion of local companies by outside or foreign interests getting control by purchase of a majority of the common or voting stock, or otherwise.

MARYLAND

The Maryland commission does not undertake to direct the policies of utility companies under its control. The commission's job is to see that the utilities furnish service at a rate which yields no more than a fair return upon the fair value of their property; and that their service shall conform to certain standards fixed by the commission; that they make reasonable extensions of their lines; that they satisfy the reasonable complaints of their customers; and that they issue no securities which do not have value behind them; and that their business methods shall be fair and above board. Any policy utility companies might adopt which would run contrary to any of the fundamentals mentioned would have to give way to the authority of the commission, which it would not hesitate to exert.

MASSACHUSETTS

That the utilities adopt a policy of giving to their customers the best service at the lowest rates they are able, having regard for the maintenance of dividends that will insure a ready sale of their securities at or above par value, and the maintenance of adequate provision for depreciation. The utilities should insure a ready sale of their stock. Payments sufficient to maintain the stock at par are necessary in order that the stockholders who have invested in the company may at any time realize what he has invested and in order that the utility may obtain additional capital when desired. Earnings in excess of this should be employed in the improvement of the service, the reduction of rates, or the increase of provisions for depreciation. Some additional payments in the way of dividends perhaps where unusual efficiency is shown may be warranted, but they ought not, in any event, to be large as the stockholder contributes but little, if anything, to unusual efficiency. Decisions of the supreme court in its interpretation of the United States Constitution, coupled with the selfish desire of the stockholder to obtain all he can in the way of dividends, stand in the way of any substantial reform in utility policies. Unless the decisions of the Supreme Court are modified or some form of contractual relation can be worked out between the utilities and the states in which they operate, there can be no real reform in the conduct of utilities except such as may be brought about by those in control of the utilities through a realization that if they do not furnish a service at a cost approximating that which it would cost the public to furnish itself, it is quite probable that the public will undertake to furnish the service.

NEVADA

There is a necessity for relief from intangible valuation theories that are urged by various utilities. Relief is necessary from the practice of building up additional charges over and above the rates in effect, by means of complicated rules and regulations, which in most cases are unintelligible to the average consumer, and which require time and attention of the commission for their interpretation. Rules and regulations should be greatly simplified instead of being permitted to become so complicated as they are becoming under the theories and plans which are being urged by the engineering forces of the large public utilities. Greater simplication in rate structures and in rules and regulations which affect the rates is an outstanding necessity. The more complicated they become, the more irritating they are to the public and the greater dissatisfaction there is with the present plan of public utility regulation. Failure to give this matter the consideration it deserves will offset everything that has been, and is being, attempted in the field of better public relations.

NORTH DAKOTA

The consumer should be given a square deal. That would necessarily include the lowest possible rates consistent with good service. What is probably of equal importance to giving the consumer a square deal is making it clear to him that he is getting a square deal. A utility company may be giving a consumer a perfectly square deal, but if the consumer believes he is being taken advantage of, his reaction is just the same as if that were actually a fact, that is to say, that he was not being given a square deal.

OHIO

The recent decision of the Supreme Court of the United States in the Illinois Bell Telephone Company Case stabilizes the power of the state commission. There should, therefore, be a reform in the practice before the commission and a hastening of procedure leading to the conclusion of cases.

UTAH

More regard for the humane element in their attitude toward the public they serve and wider publicity of their relationship to public welfare.

WASHINGTON

The department has strongly urged the

establishment of uniform rates and the simplification of rate structures. During the past year this policy has been very successfully applied and has reflected itself in greatly improved public relations between the utilities and their customers.

West Virginia

The maintenance by all utilities of a policy of frank and complete publicity on all matters relating to their business, free from propaganda.

Wyoming

Diplomatic civility in the treatment of utility customers. The elimination of arbitrary finality in dealings with customers. Amicable conferences between utilities and state commissions with a view to avoiding expensive and acrimonious hearings before the commission.

While the answers received do not cover all of the states, they are probably typical as showing what the commissions generally are thinking about.

One especially valuable suggestion is that of Commissioner McDonnell of the North Dakota commission. He points out that it is not enough for the utility companies to give their customers a square deal; *they must make it clear to him that he is getting it.*

Utility customers as a class, like the great majority of persons, are fair but they are easily misled through ignorance of facts. The knowledge that utility companies are regulated by the various states, ought to raise a reasonable presumption that the customers are getting a square deal.

But in the face of political agitation against the utilities and against the commissions, it becomes very important that the customers, if they are getting a square deal, should know it. The dictates of self-interest ought to be sufficient to make the utility companies take this hint. And while the laws creating the commissions do not require them to do anything more than see that the customer gets a square deal, the commissions would nevertheless be performing a public service in giving due publicity, wherever possible, to the fact that utility customers are, through the commission decisions and orders, receiving a square deal.

¶ How the Federal Government Should Regulate the Air Utilities, *by* Senator Sam G. Bratton, *will appear in a coming issue of this magazine.*

What Others Think

A New Plan for Converting Utility Losses into Profits

THE author of "Pricing for Profit," who has had many years of experience in industrial and management engineering, affirms that it is the duty of *entrepreneurs* to make profits; indeed, our spiritual progress, as well as our material progress, is dependent upon the realization of adequate profits. In his opinion the artificial stimulation of industry resulting from charging prices so low that profits are sacrificed restricts progress just as effectively as do the activities of highway robbers. He maintains, further, that individual *entrepreneurs,* whether large or small and whether members of a trade association or not, can be assured, even in the face of severe and unintelligent competition, of liberal and continuous profits, if they will but observe the rules that he sets forth.

A suffering and harassed business world will be interested to learn how this beneficent state is to be achieved. The answer is by the adoption of sound principles of pricing supplemented by adequate sales effort. For the discouragement of those who are now trying to make ends meet by reducing prices in order to maintain or build up sales volume, or by cutting labor and other costs, we may say at the outset that the author has little but contempt for such practices. His book is written to show that the proper method of approach is the charging of prices that will permit the realization of adequate profit margins, even at the expense of sales volume.

THIS plan, shorn of its details, is to base prices on what he calls normal costs, that is, the costs of production that would be incurred by a particular producer if his output bore the same relation to his capacity that the output of the industry bears in normal times to its capacity. In other words, a producer should not establish his prices so that they will cover the costs that he *has incurred,* but instead the costs that he *would have incurred* had the ratio of his output to his capacity been equal to the ratio of the normal output of the industry to its normal capacity.

Thus, an increase in the capacity factor (or the load factor) of an electrical company would furnish no justification for a reduction in rates, because the rates should be fixed so as to produce an adequate profit over and above the assumed costs of the enterprise when operating at a capacity factor that is normal for the industry.

The normal cost having been ascertained, the next step is to add to this figure the necessary profit. In the author's judgment the proper profit margin is equal to conversion cost, which he defines as the total producing cost less the cost of the materials used. He criticizes the plan of basing the profit margin on the total cost of the goods, including the cost of materials; the profit should be just equal to the conversion cost. Why it should be just equal he does not know; he merely says that consistently profitable enterprises do earn at this rate during normal business periods.

AND how are the increased profits that the author regards as necessary to be obtained? By means of an intensification of sales effort, and a formula is presented (on page 99) to enable the *entrepreneur* to know how much should be spent on selling. The

object of these selling expenses, be it noted, is not to sell more goods, but to obtain a greater profit margin on the goods that are sold. The market is to be developed, not by low prices, but by salesmanship.

THIS is quite an interesting book, but the plan proposed would not prove feasible in the public utility industries. One reason is that utility rates are regulated by public service commissions, and the commissioners are not likely to look with favor upon heavy selling expenditures designed to induce the customers to pay higher rates for utility services. Another reason is that public utilities are constitutionally entitled to receive only a fair return on the fair value of their property, and their profits are thus limited by commission and court decisions to that portion of the fair return that remains after bond interest and other fixed charges have been met. There is not the slightest judicial support for the doctrine that profits should equal the cost of converting materials into finished products or services. Moreover, the doctrine is economically unsound, since the profit margin is made to depend on operating cost; and this means that the greater the inefficiency, the greater the operating cost, and the higher the necessary profit.

Still another reason why the plan is not adapted to public utilities is that the author insists that every transaction must yield its full share of profit, which would mean that the rate differentiation policies of the utilities would have to be abandoned. But these policies are economically sound, as we have explained in a recent book.[1] Electric companies must make low rates to customers capable of supplying themselves, or lose their patronage; and gas companies must make low rates on gas used in industry to meet the competition of coal and oil. Such rate schedules would be impossible, however, if every transaction had to yield its full share of profit. We disagree, therefore, with the author's statement that his plan can be successfully applied to "every form of money-making endeavor"; in fact, we do not regard it as suitable for any industry, because the whole plan is based upon a curtailment of output (and thus wealth). Producers are to be turned on a grand scale into sellers, the net result being a diminished volume of consumable goods. And clearly general well-being lies not in that direction.

—ELIOT JONES,
Stanford University.

PRICING FOR PROFIT. By W. L. Churchill. New York: The Macmillan Company. 1932. 271 pages. $3.00.

[1] *Principles of Public Utilities*, by Eliot Jones and T. C. Bigham, Chaps. 7, 8 (1931).

The Electric Power Industry Reaffirms a Formula

WHEN Floyd L. Carlisle stepped up to the speaker's platform and addressed the annual convention of the National Electric Light Association recently held in Atlantic City, he spoke with a voice of peculiar authority. The electric industry is on trial. Some of the accusations against some of its members seem to have been proven. The interested public, accordingly, paid much attention to the explanation of one who might be taken as one of its industry's leading spokesmen. Mr. Carlisle met the issue squarely. He did not attempt to retreat behind blank denials or plead for a Scotch verdict of "not proven guilty." Here is a passage from his address that reveals its generally frank and courageous tone:

> "The electric light and power business is complicated, scientific, and very much specialized, but at heart it is simple. Our

corporations are creatures of the various state governments and are chartered to generate and distribute electricity at fair and reasonable prices. That is the formula for the management of our corporations to follow. Efforts to evade or circumvent that formula are fundamentally dishonest, not to say stupid and assinine, and furthermore, such efforts are wholly bad business. Such public criticism against the industry as is deserved and merited has very largely had its origin in efforts made within the industry itself to avoid that formula. Under the guise of management and supervision contracts, efforts have been made here and there to charge the operating companies with unreasonable and improper costs. This practice has not been general within the industry nor representative of its best management. In my judgment, it is the duty of this association to take an active hand in stamping out such practices."

THAT part of the address which will attract the most attention of those interested in the welfare of the industry as well as its critics, deals with the explanation Mr. Carlisle gives for the action of the association in making certain changes in its constitution. The speaker stated:

"I am very happy tonight to know that this association has gone back to first principles. We have become, by the changes in our constitution and by the clear expression of our membership, a pure trade association. There is a great work that we can perform which will be truly for the public welfare. This is the proper forum for the exchange of the most exact and scientific knowledge concerning our business. Our statistics, compiled from no other standpoint than the exact truth, can be helpful to governments, to industries, to banks, and to investors, as well as to ourselves. Any taint of propaganda, of lobbying, of trying to color facts, or to influence anyone except with facts is definitely, and I hope permanently, ended in this association. I believe, furthermore, that we must enforce the highest ethical and business practices within our membership. I repeat that the purpose of this industry is the generation and sale of electricity at fair and reasonable rates and no other, and that any company violating that purpose should not be permitted to remain within this association."

REFERRING to Mr. Carlisle's remarks on the new policy of the industry, a New York *Times* editorial stated:

"Apparently it has decided that hereafter it will devote itself exclusively to ordinary trade association activities. If that means the abandonment of propaganda and lobbying, as Mr. Carlisle infers, it will draw the sting out of some of the more familiar charges against the 'Power Trust.'"

Mr. Carlisle went on to show that in the 10-year period ending in 1930, $7,389,000,000 of new capital was raised and expended. He declared that nowhere in the world was there "anything even approaching the magnitude and character of this great plant, and, unlike most industries, it has expanded very little beyond present needs." That is, indeed, a remarkable record for these parlous times.

—E. N.

THE LIGHT AND POWER INDUSTRY AND THE PUBLIC WELFARE. By Floyd L. Carlisle. Address before 55th Convention of the National Electric Light Association. Atlantic City, N. J. June 10, 1932.

EDITORIAL. Power and Public. New York *Times*. June 11, 1932.

Is the Electrical Machine Age Demoralizing the Race?

A RECENT convention of the National Electric Light Association at Atlantic City assumed a very scholarly tone—even to a degree which one at first blush might regard as more appropriate for a meeting of an academy of political or social sciences than for an annual convention of a trade association, but the philosophical discussions at Atlantic City upon deeper analysis appear vitally material to the future welfare of the electrical industry.

The materiality of such discussion rests in the fact that the fortunes of

that industry are inextricably bound up with the machine age. Electric power certainly more than any one single factor has contributed to the creation and promulgation of our modern mechanical civilization which is now being so viciously assaulted by the *literati*.

It was Dr. James S. Thomas of the Commonwealth and Southern Corporation who undertook what proved to be an excellent defense of the machine. His paper revealed scholarly and painstaking research. Dr. Thomas' argument was unusual in that he appeared to have investigated the authorities mostly on the other side. He described the position taken by Carlisle, Thackery, Browning, and more recently Bishop of Ripon, Professor Harry E. Barnes, and Mr. Austin Freeman, to the effect that the machine is a Frankenstein monster which will ultimately and inevitably be the undoing of its creator—man.

More specifically Dr. Thomas effectually disposes of the following fallacies: (1) That there is no beauty in the machine; (2) that the machine destroys artistry in the product; (3) that there is nothing human in the machine; (4) that the factory system is undermining the health of industrial civilizations; (5) that the machine throws men out of work.

While Dr. Thomas' refutation of these solecisms seemed quite adequate it is to be regretted that he did not go into the question of controlling the machine. There are very many intelligent and clear-thinking reformers who can see the obvious advantages of the machine and scientific improvements such as for instance the discovery of numerous specific serums in the sciences of medicine, but contend that the machine, while not vicious in itself, is made to function inequitably; that the advantages to be derived from its operation are not distributed so that all mankind can share them in the proportion dictated by social ethics. This, of course, is a highly debatable question. Does the machine age owe any special obligation to care for those who, through no fault of their own, are unable to adjust themselves to earning a gainful occupation? It might be observed that the machine age seems to have a more tender regard for culture than the "guild age" which Dr. Thomas referred to cynically. François Villon was permitted to die in the gutter during this period of "ideal craftsmanship" whereas he could probably enjoy at least elementary subsidy under our modern civilization.

ONE important point which Dr. Thomas made during his address was the fact that the machine age, contrary to certain current schools of thought, does not result in standardizing the modern man or suppressing his individuality. On the contrary it releases modern society from much tedious detail and allows leisure for more cultural pursuits. Dr. Thomas showed that in lands without the machine—without electric power—without the benefit of modern medical and other sciences, just such a condition occurs. He stated:

> "In the ancient Orient, the philosophy of defeatism has gripped millions of people. 'Where the fertility of the man outruns the bounty of the soil, the soul is broken with hardships, the individual is dwarfed by the engulfing crowd, and belief in the individual will disappears from religion, as well as from philosophy.' Under such conditions, happiness is conceived as a cessation of desire, a surrendered personality, and fatalism becomes the common possession of both priest and sage. In this seething humanity, the individual has no fundamental value and loses his significance. His past is both endless and tragic. He sees himself an atom projected unasked out of nothing into nowhere, struggling for awhile and inevitably, after a while, drawn back into the dark.
>
> "But in active, progressive, Western civilization where the flame of thought burns in the face of fate, we have a different philosophy of things. The machine will master man's environment. He will build temples to his God and schools of philosophy in which he may freely exercise his intellect. In such a civilization, the individual believes in the sacredness of his own personality, in his own creative ability. As the Greeks saw evolution and growth in the universe, and as Plato and Aristotle thought the world moved, on toward perfect purpose, so the free mind of Western

civilization must continue to carry on this same high purpose."

It is important for the electrical industry as well as other utility industries to "put this philosophy across" in the minds of the leaders of American thought. It would, indeed, be a master stroke of public relations beside which all the more usual promotional efforts would pale into insignificance. Now, during a period when pessimism threatens to entrench itself in the minds of these leaders, it is the time for a big campaign of this type.

Somewhat along this latter line of thought was the address of Samuel M. Kintner, vice president of the Westinghouse Electric & Manufacturing Company. He spoke of research—The "White Hope" of our industry. Mr. Kintner pointed out that there is grave danger of industrial leaders becoming so discouraged that they will reason themselves into an attitude of holding back from further research for investments and further improvements. Mr. Kintner pointed out that the history of science had always shown such a position to be fallacious. In 1886 a United States Commission of Labor, for example, stated that "the day of large profits was probably past" because of overproduction resulting from the use of machinery. Kakule, the great chemist, told his class at Bonn in 1870 that chemistry had reached its limit with no prospect of visible advance. One of his own pupils, Vant Hoff, thereupon made one of the most revolutionizing discoveries in that science. A University of Chicago publication in 1893 expressed the opinion that future advances in physical sciences would be unimportant and then came Dr. Millikan and Einstein. Similar examples would be multiplied, but to no purpose. It is clear that possibilities of human invention are limitless.

Mr. Kintner accordingly went on to analyze some of the more important technical improvements now in the test tube stage as well as their possibilities. It was an inspiring address of the type that is sorely needed during these dark days. The electrical industry will, indeed, do a service to mankind if it can, by word or act, or both, rouse some of our thinkers out of their present Slough of Despond.

—F. X. W.

What the Machine Is Doing to Mankind. By Dr. James S. Thomas. Address before the 55th convention of the National Electric Light Association. Atlantic City, N. J. June 10, 1932.

Research—The "White Hope" of Our Industry. By Samuel M. Kintner. Address before the 55th convention of the National Electric Light Association. Atlantic City, N. J. June 8, 1932.

A "Consumer Engineer" Tells the Regulated Carriers How to Increase Their Business

What is consumer engineering? Here is a book that tells you. Perhaps your mind can encompass the idea of an "engineer consumer"; he would be an engineer who consumes things. Or perhaps you can envisage a "consumer engineer"; he would be a consumer who engineers things. But you would still be far from the truth about consumer engineering.

In the first place "consumer engineering" is a term. We are told, in the following passage from the preface:

> "Earnest Elmo Calkins first used the term 'consumer engineering,' in an address before a Washington convention of advertising men. In the minds of the authors this phrase was so aptly descriptive of a new business technology that they asked Mr. Calkins' permission to develop and extend the idea into a book."

Here are certainly two writing gentlemen, Roy Sheldon and Egmont Arens, who stand clear at the opposite pole

from that famous reporter who came back from a wedding assignment and told his city editor there was no story because the bridegroom hadn't shown up. Here are two reporters covering an oration by Mr. Earnest Elmo Calkins who bound into the office, reach the city desk with one leap, and shout in unison, "Chief, he used the term 'consumer engineering!' "

"Great Gahd, what a story!" cries the city editor. "With the permission of the copyright owner sit down and write me a book about it!"

Archbishop Calkins (and I use the title with the reverence due a pontiff of advertising letters), has not only given the authors his sanction, unction, and benediction, but has written an introduction which accomplishes a remarkable feat. This introduction begins with a definition of "consumer engineering":

> "The newest business tool to receive a definite name is what has come to be known as consumer engineering. Briefly it is shaping a product to fit more exactly consumers' needs or tastes, but in its widest sense it includes any plan which stimulates the consumption of goods."

The remarkable feat accomplished by Mr. Calkins' introduction is that it is so clear, simple, and complete that it makes the book unnecessary. There seems to this reviewer to be enough to consumer engineering to justify the above opening paragraph by Mr. Calkins, or even perhaps to justify most of his 14-page introduction. But I would be doubtful if it justified a book, and I don't mean just this book, but any book. This, mind you, is purely personal. For all I know the book may be as thrilling to some people as a short story by Somerset Maugham is to me. And yet I can use a lot of ideas for selling or promotion, because selling and promotion are right up my alley.

THE great trouble between me and this book is that I don't like this business of making a racket sound like a science. The fact is that "consumer engineering" is any legitimate skull-duggery that sells more goods and boosts profits. If this is a science, then so is gypsy fortune-telling. Yet Messrs. Sheldon and Arens tell us,

> "Consumer engineering, then, is the science of finding customers, and it involves the making of customers when the findings are slim."

Seeing the bankrupt audience sort of screwing up its face at this kind of talk, the authors hasten to make it clear that they realize a lot of people haven't any money with which to be customers. "In its broadest and most fundamental aspects consumer engineering," they state, "will probably tackle problems which to date have not been within the province of business at all, but have been left to politics with rather disastrous results. *There is the job to be done of converting those millions who have stood in the bread line into consumers with money to spend.*"

The italics are mine, and I use them because, for one thing, the sentence seems to have been made for the express purpose of describing the cut-rate taxicab racket now operating in virtually every big city in the United States. I suppose it was a "consumer engineer" who conceived the idea of selling thousands of passenger automobiles not only to men without any money but to men without any jobs, through the driver-rental plan. This, to be sure, took men out of bread lines and made them consumers with money to spend. But at the same time it is driving the publicly regulated transportation utilities into bankruptcy, and even the regulatory commissions seem able to do very little about it.

The trouble about trying to create a "science" out of matter like consumer engineering is that the essence of the matter is very drab and simple, namely, to ballyhoo your goods or services so effectively that people will want them and buy them even though they don't need them or haven't the money to buy them, or are already satisfied with something else. That is the story in a nutshell and that, ladies and gentle-

men, is believed by more than a few simple folk, to have been what really put this country on the bum. And since, in this drab and simple form, consumer engineering falls short of the noble proportions of a science, the science-creators hasten to add that it will also balance the budget, banish unemployment, raise wages, shorten hours, and introduce lasting happiness and prosperity. In short, they say it is really "human engineering." After producing the goods that the penniless customer just can't let alone, it puts money into his empty pocket so that he won't have to steal them.

WITH all respect to Messrs. Sheldon and Arens, and also to Mr. Calkins, I submit that this is nonsense. I submit that their chapter on the railroads proves it. "With few exceptions," they declare, "the railroads' general attitude toward the consumer has been a more or less forthright variation of the 'public be damned.'" One need have had only a little contact with the railroad business in the last ten years to know that a statement like this is made out of pure ignorance. There may be men who have done more sweating and stewing than railroad men to try to sell their stuff, but I do not know who they are. I do know that their fight has been the toughest kind of a fight—the fight of a regulated utility against an unregulated competitor; and not only a competitor who was unregulated, but one who had his right of way handed to him free of charge on a silver platter—all paid for by the taxpayers who now denounce the victimized railroads for appearing to be slightly punch drunk.

Yet where "neither critics nor champions of the railroads seem to have hit upon the crucial weakness of the railroads," Messrs. Sheldon and Arens hit upon it in the twinkling of an eye. It was simply, they say, "their lack of understanding of the problems of consumption"; and they add, "A 10-year-old boy of average intelligence could sit down and in half an hour tell almost any railroad president in the country how he could give his customers better satisfaction."

Well, well, it is a dizzy world, to be sure, and if a man chose to be a railroad president it probably serves him right if just at the height of his career, consumer engineers sic 10-year-old boys on him and then on the next page tell him (as Messrs. Sheldon and Arens do), that nobody can really solve his problems except somebody like Leonardo da Vinci!

THE reason I don't like consumer engineering is because it can mean anything, and hence, I maintain, means nothing. The authors nominate as one of the greatest consumer-engineer slogans of the age, "It's smart to be thrifty." I would also nominate, "Never give a sucker an even break," and I defy them to knock it out. The science may call for raising prices, but it may also call for lowering them. It may mean painting a thing green, red, or blue, or it may mean not painting it at all. It means anything that can sell goods to people who don't want them. It means disturbing my peace of mind and my satisfaction with what I have.

I prefer the philosophy of Andre Maurois in "A Private Universe":

> "We must not be made the slaves of ambitions and needs which we do not feel and which common men seek to suggest to us in order to hold us."

If I seem to have forgotten that this is supposed to be a book review and not an essay about my own prejudices, let me apologize and state that "Consumer Engineering" is a good book about a phenomenon of modern American business. Only I just don't want to hear any more about it.

—RAYMOND S. TOMPKINS

CONSUMER ENGINEERING: A New Technique for Prosperity. By Roy Sheldon and Egmont Arens. Introduction by Earnest Elmo Calkins. New York: Harper & Bros. 1932. 260 pages. Price $3.50.

The Utterances of Congress about the Utilities

In the Senate

RADIO COMMISSION

THE annual appropriation for the Federal Radio Commission was reduced from $376,000 to $330,000. (*June 25, 1932.*)

LAID-OFF RAILWAY HELP

MR. Wagner (D.) of New York submitted a resolution which was referred to the Committee on Interstate Commerce that would empower the Interstate Commerce Commission to investigate an order recently issued to the Boston and Maine Railroad shifting its offices from Rotterdam Junction, New York, to Mechanicville, New York, proposing the practical abandonment of the community and the alleged hardship and financial loss. (*June 24, 1932.*)

INTERSTATE COMMERCE EMPLOYEES

MR. Wagner (D.) of New York obtained leave to introduce a bill designed to extend the principle of Federal workmen's compensation for industrial accidents to interstate commerce employees. (*June 23, 1932.*)

STREET CARS IN PANAMA

MR. Blaine (R.) of Wisconsin introduced a bill for the police regulation of street railway power operations in the Panama Canal Zone (*June 30, 1932.*)

RAILWAY OFFICIALS' SALARIES

MR. Couzens (R.) of Michigan obtained leave to have printed as a document a letter from Interstate Commerce Commissioner Joseph B. Eastman which includes three documents: (1) a summary and analysis of the returns to a questionnaire; (2) a statement showing the average annual salaries of the various groups of salaries as of March, 1932, and list of each position reported paying more than the average; and (3) the detail of the returns. (*June 27, 1932.*)

INTERSTATE COMMERCE COMMISSION

MR. Jones (R.) of Washington proposed an amendment to cut down the appropriation for the valuation of property of carriers by the Interstate Commerce Commission from $2,750,000 to $750,000. The proposed amendment was rejected after considerable discussion between Mr. Couzens (R.) of Michigan and Mr. Johnson (R.) of California. Mr. LaFollette (R.) of Wisconsin also spoke against the amendment. (*June 27, 1932.*)

In the House of Representatives

MISMANAGEMENT OF RAILROADS

MR. Griswold (D.) of Indiana extended his remarks in the *Record* to the effect that very many railroads in the United States are mismanaged against the public interest; that they have increased their rates notwithstanding Federal subsidy; that the proposed mergers are designed to augment their corporate income; and that the railway-carrier management should install the 6-hour day for its employees. (*June 24, 1932.*)

Other Articles Worth Reading

AIR TRANSPORT RATE-MAKING. By Myron W. Watkins. *Air Law Review.* April, 1932.

BUSINESS *vs.* FINANCE. By David Cushman Coyle. *Corporate Practice Review.* April, 1932.

It is only beginning to be recognized that in a "plenty economy" there is and must be a conflict between the interests of business and those of finance. Should the state attempt by industrial regulation to adjust the differences between business' problem of overequipment and the financial injunction of thrift? Mr. Coyle, well-known consulting engineer, discusses these problems very broadly, particularly in the light of the recent New State Ice Co. *v.* Liebmann decision. The technical soundness of the economic principles involved were checked by Dr. Virgil Jordan, economist of *The Business Week.*

ECONOMIC ASPECTS OF RATE REGULATION. By C. Elmer Bown. *American Bar Association Journal.* July, 1932.

IS THE HOLDING COMPANY NECESSARY? *The Financial World.* June 8, 1932.

WHAT HAPPENED TO INSULL. By John T. Flynn. *The New Republic.* May 4, 1932.

The March of Events

Application of Power Tax

THE 3 per cent Federal tax on electricity which became effective June 21st has given rise to much discussion as to the way the tax should be collected and what the utilities and municipalities should do about it. The tax as levied falls directly upon the consumer, but in some parts of the country agitation for rate reduction seems to have been spurred by the contention that the tax should be shifted to the utilities. Some municipal plants have indicated their willingness to assume the tax, and the question has been raised whether this can legally be done.

City Commissioner Earnest E. Anders of Jacksonville proposed that the electric light rates be reduced sufficiently to take care of the tax, but the suggestion was held in abeyance pending decision on the question whether this could legally be done. The opinion was expressed that the light plant could not absorb the tax under the provisions of the Federal law but that the rates could be reduced enough to take care of the tax. Mayor Adams and the Better Government Association were against any reduction in rates until an expert could be employed to make a careful survey of the plant and the electric system. Commissioner St. Almo W. Acosta called the plan a "good political move but not very good business."

"Regulations 42—Revenue Act of 1932" issued by the United States Bureau of Internal Revenue give the scope and manner of collection of the tax. Quoting from these regulations:

"Art. 40. Scope of Tax—The tax applies to the amount paid for all electrical energy furnished for domestic or commercial consumption, either by a privately or publicly owned operating electrical power company.

"Electrical energy for domestic or commercial consumption includes all electrical energy furnished the consumer except electrical energy furnished for industrial consumption. The electrical energy for industrial consumption includes that used generally for industrial purposes, that is, in manufacturing, processing, mining, refining, irrigation, shipbuilding, building construction, etc., and by public utilities, waterworks, telephone, telegraph and radio companies, railroads, and other common carriers.

"Art. 41. Exemptions—Electrical energy furnished to the United States or to any state or territory, or political subdivision thereof, or the District of Columbia is exempt from tax.

"This exemption does not apply to payments for electrical energy for domestic or commercial consumption furnished by governmentally or municipally owned operating electrical power companies."

Party Platform Considers Public Service Corporations

THE Democratic convention, like the Republican convention, has made references in its platform to public utility regulation. One of the measures advocated is "regulation to the full extent of the Federal power of holding companies which sell securities in interstate commerce; rates of utility companies operating across state lines; exchanges in securities and commodities."

The platform advocates expansion of the Federal program of construction affected with a public interest such as flood control and waterways, including the St. Lawrence-Great Lakes Deep Waterways.

The removal of government from all fields of private enterprise "except where works and natural resources in the common interest; conservation, development, and use of the nation's water power in the public interest," is contained in another plank.

California

Los Angeles Decides to Intervene in Telephone Case

THE city of Los Angeles, according to the Los Angeles *Examiner*, has decided to intervene in the suit brought by the Telephone Rate Reduction Association before the commission in an effort to obtain a 25 per cent reduction in telephone rates. The city council, on June 17th, adopted a resolution instructing the city attorney to have a representative attend the commission hearing "to guard and protect the rights of the city."

Hearings on the complaint were opened before President Clyde L. Seavey of the railroad commission on June 22nd. The jurisdiction of the commission to grant permission to the company to change its 4-party lines to 2-party lines was challenged by John E. Staley, business consultant. Victor E. Wilson, attorney for the association, declared the company's answer to the rate complaint was insufficient, but President Seavey denied a motion to compel a more explicit answer.

Oscar Lawler, chief counsel for the company, declared that the contention of excess profits was untrue. He said that during its first five years of operation the company did not pay the cost of operation, and during the second 5-year period its profits were $6,000,000 less than what was considered a fair return on the investment. The case was adjourned by the commission for further hearing on July 6th.

Higher Fares Mean Lower Revenues, Says Report

A REPORT by N. Randall Ellis, valuation and rate engineer, for City Attorney John J. O'Toole of San Francisco, declared that it does not pay to increase street-car fares and that the city's 5-cent local transit fare should not be raised to 6 cents. Mr. Ellis states that cities adhering to a 5-cent fare show an actual gain in rides per capita, while other cities show a loss. Quoting from the report:

"In cities between 250,000 and 500,000 population the average net increase in fares from 1918 to 1930 was 58 per cent (approximately from a 5-cent to an 8-cent fare), while the corresponding revenue per capita of the transit system showed a loss of 10 per cent.

"In other words, the fare increase instead of increasing gross revenues decreased them.

"In cities of over 500,000 with approximately the same increase in fares (56 per cent) the increase in revenue per capita was only 14 per cent, or about one quarter of the fare increase.

"If this same ratio were used for San Francisco it would mean that a raise from 5 cents to 6 cents, or 20 per cent in the fares, would result in an increase in revenue of only 5 per cent.

"However, when we consider the peculiarities of San Francisco's short-haul riding the net result of such an increase, in my opinion, would be little if any increase in revenue and possibly would bring an actual decrease."

Connecticut

New Rates Authorized to Protect Bonds Pending Appeal

JUDGE John Richards Booth of the superior court has granted a motion of the New Haven Water Company for permission to make its increased water rates effective in July, over the objection of the city of New Haven, which contended that the city was in no position to pay the $70,000 asked by the company under the new rates, owing to existing conditions. The company contended that it would be operating at a deficit of more than $400,000 for the current year and that the bonds of the company would not be legal unless the common stock was yielding 4 per cent.

The city had taken an appeal from an order of the commission increasing the water rates. The Connecticut law provides that such an appeal shall supersede the order, unless the superior court or any judge thereof may order that such appeal shall not so operate. The opinion states:

"Counsel on both sides have advanced strong reasons why their respective claims should be sustained, and the question narrows down as to which course will be the lesser evil. There is no doubt but that the city will be inconvenienced by paying these new rates particularly in the present state of depression, in the event that the order of the public utilities commission is set aside, but there is, of course, no certainty that this will be done. There would be no particular reason for granting the application so far as the water company and its stockholders are concerned, as they have fared well enough in the past and what amount would be lost them during the pendency of the appeal could be easily borne.

"There is, however, another fact that must be given consideration and that is the statute regulating the investment by savings banks of bonds of water companies. It is apparent from the figures submitted that this company cannot pay 4 per cent upon its stock during the coming year under the old rates. It is true that the city raised some question over this, but I consider that is something that should be determined only upon the appeal. It consequently follows that the company's bonds will not be legal savings bank investments for at least four years which in my opinion will work a very serious and far-reaching hardship upon those who own these bonds, or who rely upon them as securi-

ties. The result of this, I consider, would be more serious than the payment of the new rates by the city and which, after all, may be the permanent ones. If they do not become permanent, they can be repaid by the company."

District of Columbia

Utility Will Pay Consumers Interest on Cash Deposits

A SUM estimated at $50,000, representing interest on cash deposits made with the Potomac Electric Power Company by consumers to cover bills for services, is to be returned to consumers upon application, under a plan voluntarily adopted by the power company, according to a report in the Washington *Star*. A suggestion to this effect had been made by the District commission. This is said to be the first time such interest payments on accounts running more than one year are to be returned to consumers prior to closing out of accounts. Says the *Star:*

"The interest is to be paid immediately by the power company upon application made at the company's offices by its consumers. Notices of the forthcoming interest payments are to be sent out at once by the power company.

"The cash deposits, ranging from $5 upward, depending upon class of service rendered, are paid by the consumers, to cover bills rendered by the company for service. Interest payments are not paid on these deposits until a year or more of service has elapsed. There are 65,000 or more consumers who have made deposits to the company. It was estimated that the company now holds approximately $600,000 in cash deposits."

Georgia

Reappraisal of Power Utility Properties Is Sought

A SPECIAL councilmanic committee appointed in Atlanta to seek lower domestic and commercial rates has demanded a reappraisal, in the light of present reduced values, of all utility properties used in supplying electric energy to Georgia consumers. The committee issued a statement calling upon the public service commission to revise valuations upon which electric rates are based, and asked the coöperation of other Georgia municipalities in securing such an appraisal.

The committee cites the rule that rates shall be based on a fair return on the present value of utility properties, and points out "for the first time in twenty years such an appraisal would be to the advantage of the consumers of electricity."

The committee was appointed to seek reduction sufficient, at least, to offset the 3 per cent Federal tax levied by Congress on consumers of electric energy.

Indiana

Wrong Court for Rate Case, Says Attorney

EFFORTS of the Northern Indiana Public Service Company to attack an order of the commission directing a decrease in the gas rates in Logansport ran into a technical snag on June 21st in the United States District Court for Northern Indiana when George Huffsmith, deputy attorney general, questioned the jurisdiction of the court to sit in the case in the South Bend division.

Pending the submission of written briefs arguing the proposition by opposing attorneys and the decision of the 3-judge court, consisting of Judge William M. Sparks, members of the circuit court of appeals in Chicago, Judge Robert C. Baltzell, of the southern Indiana Federal court, and Judge Thomas W. Slick, of the northern district, a temporary restraining order which prevents the commission order from going into effect was continued.

The company had filed a petition in the northern district on the contention that the

official residence of Commissioner Harry K. Cuthbertson, member of the commission and a defendant in the suit, was in Peru, Indiana, which is within the jurisdiction of the local Federal court. Mr. Huffsmith introduced an affidavit by Commissioner Cuthbertson in which he claimed to have his official residence in Indianapolis. In addition, he filed a motion challenging the local court's jurisdiction on the grounds that none of the other commissioners, the attorney general, or the governor had his official residence in the district. In answer to charges that his tactics were merely dilatory, he pointed out that in all probability, while the same three judges would hear the case if in the southern district on an appeal to a higher court, there might be a ruling against the jurisdiction and the whole case would have to be tried over again in the southern district.

Attempt to Show Lower Values since Appraisal

COMMISSIONER H. K. Cuthbertson of the public service commission has received evidence on the petition of the city of Columbus for a reduction in electric rates based on the contention that the values of the Public Service Company's property are lower than at the time the property was appraised last September. The Columbus *Republican* states:

"Thus far in the hearing, with the assistance of public service commission engineers and accountants, figures have been presented to the commissioner tending to show that the used and useful property of the utility for electric purposes for the city of Columbus is valued at approximately $480,000. Also, that on this investment the company earned here last year $136,999.50. . . . Evan Williams, chief accountant, of the public service commission, was the first witness called this morning. He testified in the hearing Monday.

"Under questioning largely by Commissioner Cuthbertson, Williams endeavored to show how the valuation of the Columbus property of the utility had been 'broken down' from the district and divisional values of the utility which were obtained from company records.

"Williams stated that his figures had been obtained from the company's books."

Other witnesses testified to reductions in the prices of electrical supplies and equipment, reduction in furniture prices, and the like. W. H. Abbott, member of the engineering staff of the commission explained the appraisal and inventory of the utility property, which was made of the entire "south system" and then allocated back to the cities. He said that the procedure followed that approved by the supreme court in the Martinsville electric case.

C. E. Custer, Columbus city attorney, set forth four reasons why the temporary rates ordered to go into effect on February 1st should be promptly reduced by the commission and not made permanent in the instant proceeding. He contended that it was an emergency rate structure formulated to apply to some seventy-five cities and towns, taken as one system, and not based on the property used and useful for supplying electricity to the separate municipalities; that the emergency rate now in force admittedly increased the minimum for consumers in Columbus without a hearing, notwithstanding a statement in the order that "a negligible number of consumers in approximately eight of the communities affected by this rate structure in the way of a slight increase as to such minimum users"; that the emergency rate improperly increased the cost of current for power users; and that this rate should be reduced because the order stated that the emergency rate would decrease the revenues of the company in the south system and this had not been done.

Lower Rate Offer Stops Municipal Plant Threat

THE city administration of Michigan City has rescinded its action on a referendum election which was to be held for the purpose of deciding whether the municipality should build its own power plant. This was voted at a special meeting of the common council after the Northern Indiana Public Service Company offered a new and much lower electric light rate affecting the civil city, school city, and street lighting and power. The city was to enter into a new 3-year contract with the utility, which would mean a saving of $9,326.77 as compared with the old agreement which expired recently. The administration, according to the Michigan City *Dispatch*, was to bend its efforts now to bring about a greater reduction for domestic and commercial users. The *Dispatch* states:

"The nearly $10,000 saving in the city contract brings the total reductions in domestic, commercial, industrial, and municipal rates to $46,000. This saving has been realized during the last four months by virtue of work carried out by a committee headed by Attorney Williams.

"The principal saving has been in rates for commercial and domestic users. This saving, amounting to $37,000, was effective in the June bills received by consumers.

"The saving brought about through the new contract with the city will become effective next August when the administration drafts the 1933 budget."

Kentucky

Would Improve Power Rates in Contract with Utility

THE mayor of Louisville has suggested that electric power rate schedules be included in the tentative contract being negotiated with officials of the Louisville Gas & Electric Company. It has been pointed out that this would be a precedent since in the past contracts have set out only a maximum commercial rate. Quoting from a report on the negotiations appearing in the Louisville *Times:*

"Mayor Harrison said those associated with him in the negotiations share the feeling that the next ordinance should include specific schedules not only for domestic and commercial rates, but for power as well. The clause calling for special rates for special cases is expected to remain in the ordinance undisturbed.

"There are always cases, the mayor cited, where the power company could extend concessions to large consumers of power to prevent losing the customer. Industry in Louisville has actually been stimulated by such practice, he believed.

"The existing contract rate for power is topped at 7.6 cents net a month per kilowatt as a maximum, although prevailing charges actually are held nearer 4.75 cents. The maximum under the new ordinance has veered around 4 cents."

Maryland

Relief Plan for Railways Submitted to Council

A PLAN for financial relief for the United Railways was given to the city council of Baltimore on June 13th. This provides for annual reductions of the 9 per cent park tax until it reaches 2 per cent, and in lieu thereof a heavy impost on net income. The plan was submitted by Mayor Jackson. The Baltimore *Sun* states:

"Briefly, the plan put forward by the mayor calls for:

"Gradual reduction of the gross receipts (park) tax from 9 per cent to 2 per cent, the reduction to be at a rate of one per cent a year for seven years.

"A high tax on the company's net income—as much as 20 per cent—to begin in 1939 when the 2 per cent gross income rate would be effective. The amount of this tax would be based on the net earnings from all lines, in the city and out, and easement taxes and license taxes paid by the company would be deducted from the city's share.

"Opponents of a reduction of the park tax reiterated their stand in commenting on the substitute ordinance suggested by the mayor.

"'We are not interested in what will happen in 1939,' said Linwood L. Clark, attorney. 'We are opposed to any deferment, and I don't believe the city council has any right to defer payment of the tax. The enabling act doesn't give it such authority. We certainly should insist on another hearing should a substitute measure be introduced.'"

William S. Norris, president of the Taxpayers' Protective League and of the Allied Civic Improvement and Protective Association, Inc., both of which have opposed consistently any tax relief measures for the United, said that in all probability there would be no net income for the United in 1939. He said that the tax is a first lien on the company and must be paid before anything else. Baltimore's net bonded debt per capita was said to be the highest of any city with more than 500,000 population in the country, exclusive of Philadelphia, New York, and Chicago. He expressed the opinion that the city should not give up any source of revenue under the present conditions.

Rate Reduction to Offset Power Tax Is Proposed

A MOVEMENT to ask the public service commission to reduce electric light rates because of the imposition of the 3 per cent Federal tax on consumers was to be made by the Taxpayers' Protective League of Baltimore, according to the Baltimore *Post.* A representative of the league declared that "the price of electricity is already too high, and it is, therefore, unfair and unreasonable for this additional Federal tax to be imposed on the domestic and commercial user." He said that because a man does not use as much electricity as the industrial consumer is no reason that he should be better able to pay that tax.

Minnesota

Reclassification of Submerged Lands Is Secured

THE Minnesota commission, after intervening in the Missabe & Northern Railway recapture valuation case, protested against classification of 193 acres of land lying in the public waters of Minnesota as land "owned and used." The land, submerged in St. Louis Bay, is used by the railway for dock purposes.

The carrier claimed title thereto under deeds by private owners conveying shore land and purporting to convey title to the land lying under the water between the shore and the harbor line.

Chief Engineer Jurgensen of the commission appeared at the recapture hearing and presented evidence in support of the Minnesota protest. The general solicitor for the National Association of Railroad and Utilities Commissioners filed a brief on behalf of the Minnesota commission discussing the legal questions involved. A bulletin by the general solicitor states:

"At the hearing the Bureau of Valuation recommended a unit value upon the land of $4,000 per acre; hence the total amount involved was in excess of three quarters of a million dollars. Under the law of Minnesota, lands under its navigable waters are held in trust by it in its sovereign capacity for the benefit of its people, without power of alienation. The Minnesota commission contended, therefore, that the land in question should be classified as 'Rights in Public Domain,' and that under the rule established in the Texas Midland Case, (1918) 75 Inters. Com. Rep. 1, 175, the amount which should be allowed the carrier therefor was what it actually cost it to acquire its rights.

"In a proposed report by Examiner Woodrow now made public the Minnesota contention that the lands should be reclassified is approved. To this extent the protest which it made is sustained. However, the examiner at the same time recommends that the value placed upon the remaining lands in the zone be increased sufficiently so that exactly the same total land value shall be reported as if it had title to the submerged lands. The Minnesota commission through its chief engineer has directed us to make protest against that part of the examiner's report which covers this matter. Such protest together with supporting brief are now in course of preparation."

Phone Rate Hearing Delayed

THE St. Paul telephone rate valuation hearing cannot be resumed before September 15th, according to a statement by D. F. Jurgensen, chief engineer for the railroad and warehouse commission. He informed the commission that less than one third of property resurvey activities undertaken to iron out differences between state and company engineers had been completed. He said that the main hindrance is that the commission engineers are not getting the differences and inventories claimed by the company adjusted speedily enough.

New York

Large Savings Found to Have Resulted from New Electric Rates

THE rates of the Edison System in New York city which went into effect last summer, will have saved retail consumers approximately $9,000,000 for the year ending August 1st, according to testimony introduced at a public service commission hearing on rates. When the new schedule was approved by the commission, it was estimated that it would save consumers about $5,500,000 in a year. In a report by the New York *Post* it is stated:

"The new charges lowered the cost of electricity in the eight months from September 1st to May 1st by $6,495,722, or $995,722 more than the total saving originally estimated for the entire first year, it was shown.

"The total saving, company exhibits showed, was divided among the four companies of the Edison System as follows: New York Edison Company, $2,601,530.55; United Electric Light & Power Company, $739,702.44; Brooklyn Edison Company, $1,785,599.24; New York and Queens Light and Power Company, $1,368,890.29.

"Bills were lower for 56.6 per cent of the customers of the companies, there was no change for 2.8 per cent, and the bills were larger for 40.6 per cent.

"Corporation Counsel Arthur J. W. Hilly cross-examined the witnesses and attempted to show that only the large electricity users had benefited. He and Milo R. Maltbie, chairman of the commission, clashed several times, and on one occasion Mr. Maltbie

checked him from bringing up the question of lower operating costs.

"Mr. Hilly had contended that lower operating costs must be considered in determining the fairness of the new rates, but Mr. Maltbie declared the commission's only interest was to determine whether or not the Edison System had lived up to its promise to reduce the cost of electricity to consumers by $5,500,000 in a year."

Commission Power to Pass on Stock Ownership Denied

THE Associated Gas & Electric Company has issued a statement denying the right of the public service commission to determine that the acquisition of the stock of the New York State Railways was null and void. It has been intimated that court action would be taken to determine the company's legal and constitutional right "threatened by a public service commission," according to the Rochester *Times-Union*.

The commission, after investigation, had decided that the Associated Company acquired control of the New York State Railways without permission of the commission as required by law, and that, therefore, the acquisition was null and void. [See page 114 of this issue.] The company's statement contends that the subject of the acquisition of stock was fully covered in the annual report of the Associated Gas & Electric Company for 1929, where it was said:

"The Associated Gas & Electric Company could not legally, under the Public Service Commission law, acquire these street railway holdings, nor did it want them if they could be legally acquired, because it believed them to be insolvent, with early maturing bond issues which made receiverships likely.

"It being impossible, however, to secure the gas and electric properties without some arrangement with respect to the street railway properties, individuals connected with the Associated Gas & Electric Company volunteered to take over the stocks of the street railway companies. In doing this they acted for the account of the Railway & Bus Associates, a common-law trust. They were advised by counsel that this arrangement in no way contravened the Public Service Commission Law, as it did not involve the acquisition of stocks of street railway companies by any stock corporation."

The Associated announced that there had been no change whatsoever in the situation since the 1929 annual report was issued. The New York State Railways was then and is now in the hands of the United States court receivers. Quoting further:

"It was explained further that during its entire connection with the New York State Railways, the Associated Gas & Electric Company, received only one payment from that source—$9.45 in reimbursements for a telephone call.

"The Associated added that although the former president of the railways stated that no services of any value were rendered to the railways by the service company which supervised its operations, he received as executive, until the receiver succeeded him, his own compensation direct from that service company which furnished the railways his service under its contract. The same was true of the treasurer of the railways and other persons.

"No reimbursements for these actual out-of-pocket expenditures has yet been received. Furthermore, in order to keep the railways functioning pending the appointment of a receiver, these friendly interests advanced a substantial sum to pay the wages of motormen and conductors and for taxes. This money also has not been repaid.

"The inference, therefore, by the commission, that in some manner the New York State Railways was 'mulcted' by subsidiaries of the Associated Gas & Electric Company is absolutely at variance with the facts."

Cost of Gas Supply Is Attacked in Buffalo Case

THE city of Buffalo and the Iroquois Gas Corporation have resumed their struggle over gas rates for the city of Buffalo. Representatives of the company declared that they had been struggling for four years to get an equitable rate for the service furnished and that the time had come when they would have to receive some consideration if the company is to survive. On the other hand, members of Buffalo's legal staff attacked the proposals of the gas company as too high and unfairly based on results of abnormal conditions which should not be used as a means of increasing gas charges. The Buffalo *Courier-Express* declares:

"The Iroquois submitted an exhibit in support of its proposed new rates. Counsel explained that two years ago the public service commission approved a rate schedule, but later ordered a rehearing. The schedule originally approved, it was stated, used a rate base which would have yielded approximately $2,600,000 annually. The city of Buffalo submitted one which would have yielded about $2,200,000. Now the company proposes what it calls a compromise which, due to present condition, it was stated, is calculated to yield about $1,100,000.

"At present, it was explained, the charge for gas from the Iroquois Corporation is 65 cents a thousand cubic feet. Under the schedule proposed, the rate would be $1 for the first thousand cubic feet, 65 cents a

thousand for the next 9,000, and 60 cents for all over the first 10,000 cubic feet, or the heating load as the company officials called it.

"The city contended that a fair rate for the gas company cannot be fixed by the public service commission until the determination of the fairness of the charge made the gas company by the United Natural Gas Company of Pennsylvania for gas delivered at the state line. It is obvious, they declared, with the development of the natural gas industry in New York state, that the rate charged by the United Natural Gas Company to the Iroquois Gas Corporation is 'unjust, unreasonable, and exorbitant.'"

South Carolina

Utilities Asked to Absorb Tax

THE South Carolina Railroad Commission has sent a letter to electric utilities in the state asking that they absorb the new Federal tax of 3 per cent on power. This action followed a request from city council of Columbia.

Each company was informed that should it comply with the request, the commission would take into consideration this absorption as part of the operating costs of the company in the studies of its rate structures now being made by the electric utilities division of the commission. The commission states that it is true undoubtedly that in effect the assessment of the 3 per cent on the amount paid for electrical energy per month by the consumer amounts to an increase in rates, and this at a time when there is a falling market for commodities, necessaries, and luxuries. The commission expresses the opinion that the company can well afford to absorb the tax and that this absorption undoubtedly would strengthen its relations with its customers and the people generally.

Texas

Limited Return in Boom Times Held to Justify Present Rates

"YOU won't let us make more than a certain return in boom times," Clyde Stewart of the Southwestern Bell Telephone Company told the Waco commissioners. "Why should you penalize us in hard times?" This question came up when the telephone company objected to reducing rates in the city of Waco. The telephone company's spokesman asserted that a 7 per cent return is fair, and that when the company makes less than money costs it, it is not making a fair return on the investment.

City representatives contend that the company has been demanding a fair return on its maximum capacity plant in the city, although it has lost 1,200 customers of recent months. They insist that the remaining customers should not be required to produce enough revenue for a return on the entire investment. The company believes that it is entitled to rates which would give it a fair return if it can sell its service, and states that it is always trying to sell the service.

The subject of deposits came up at a recent rate hearing by the city commission when City Manager E. E. McAdams called attention to the practice of the company of demanding a deposit before a telephone is installed, and of requiring telephone rent in advance. Mr. Stewart explained that the company did this to protect itself from customers whose credit is bad. He said that if the city is going to deny the company the right to collect deposits or to take telephone rent in advance the city must guarantee against bad accounts.

West Virginia

Special Investigation of Utility Operations Is Undertaken

THE public service commission has undertaken a special investigation of utility operations with the intention of reducing some rates, according to newspaper dispatches. The *United States Daily* says:

"Although the larger utilities, the commission said in a formal statement announcing the investigation, are now earning from 3 to 5 per cent annually on their capital investment, there are a few smaller firms whose

profits are 'greater than appear to be justified under present conditions.'

"The commission said that, because early in the year 'it became apparent there was to be no immediate relief' from the present economic conditions, it called upon every utility under its jurisdiction to submit a special report of capital investment, operating revenues, operating expenses, depreciation charges, tax assessments for 1931 and statements concerning any changes in salaries or wages and the number of persons employed.

"Those reports were analyzed by the commission statisticians and showed the earnings of both the large and small utilities.

"In the cases of the smaller utilities where the profits are in excess of those which appear to be fair under present conditions, the commission stated, a further investigation was ordered and conferences with officials of the companies held in which there was 'a full and frank discussion of the problem of meeting the necessities of the public and the utility.'

"This method and the policy of 'across-the-table discussion,' the commission stated, 'saves the great expense and loss of time incident to formal rate investigations and usually results in adjustment of rates satisfactory to the legal and equitable requirement that charges against the public for monopolistic public utility service must be reasonable and just. The policy is not new, although the work has been speeded up since the first of the year because of rapidly changing and most unusual conditions.'"

Wisconsin

City Attorney Will Appeal to People on Telephone Appropriation

MAX Raskin, city attorney of Milwaukee, according to the Milwaukee *Leader*, has announced that in coöperation with the Socialist party, he will take his fight for a $15,000 appropriation for an investigation of telephone conditions directly to the people in the wards of nonpartisan aldermen, who are blocking the appropriation for the investigation. The *Leader* states:

"Raskin has argued in demand for this appropriation a number of times before the finance committee of the common council, and has stated that a separate investigation by the city is necessary if the reduction of telephone rates is to be won for the city in the near future. In this stand Raskin has had the support of all of the Socialist aldermen in the council, and he has recently also gained the support of members of the state public service commission, which commission is now conducting a statewide investigation on telephone rates."

The council had voted to hold up action on a report by the finance committee, which recommended the appropriation. Prior to this action, Commissioner Theodore Kronshage, according to the *Leader*, had stated to the aldermen that he was directed by the commission to say that a special investigation by the city would aid the commission in speeding up its final determination on telephone rates.

Joseph Krizek, general counsel for the telephone company, opposed the appropriation and investigation on the grounds that the proposal would be unfair to the company.

Facts Worth Noting

THE only book about United States telegraph stamps was written by Joseph S. Rich, philatelist.

* *

THE nation's capital, Washington, was one of the few cities to show a gain in telephone service during the year 1931.

* *

THE Holy Land is furnished with telephone service owned and operated by Palestine; 4,374 instruments were in service in 1931.

* *

THE first gas tank in the world to be camouflaged was treated in 1926 by Ray Greenleaf, a New York artist who had experience in camouflage work during the World War.

* *

A "Mystery Outing Train" of unannounced destination and traveling "under sealed orders" but guaranteeing a barbecue at a resort, has just been inaugurated by the Southern Railway System.

The Latest Utility Rulings

Commission Declares Unauthorized Acquisition of Railway Control Illegal

THE New York commission on its own motion in 1929 began an investigation to determine the ownership of the capital stock of the New York State Railways, and to find out whether any transfer or assignment of the stock had been made in violation of the provisions of the Public Service Commission Law. The conclusion was reached that the stock of the railways was illegally acquired by the Associated Gas & Electric Company without commission authorization, and that all entries and changes made in the books and records of the New York State Railways, purporting to record the sale of more than 10 per cent of the total issued and outstanding capital stock, were made in violation of the provisions of § 54 of the Public Service Law and were void and of no effect and should be removed, and that all such entries should be corrected so as to show and reflect ownership of capital stock as it was prior to the attempted sale.

The proceeding was concluded and the findings made at the request of numerous holders of bonds of New York State Railways and other interested persons, but inasmuch as the New York State Railways is now in receivership and subject to the jurisdiction of the Federal courts, no order was issued.

It appeared from the evidence that the Associated Gas & Electric Company, in acquiring control of Rochester Central Power Corporation and certain gas and electric properties owned or controlled by it, was required also to acquire the stock of the New York State Railways, although it placed no value upon such stock and considered the purchase price to cover only the electric and gas properties. The stock, however, was never transferred to the Associated Company, but the transfer was recorded as if the stock had been transferred to a copartnership, Daly and Company, comprising persons connected with the Associated Company. It was found by the commission that Daly and Company did not pay any consideration for the stock, but that any consideration which was furnished was furnished by the Associated Gas & Electric Company. All of these transactions were without the consent of the commission.

The commission also discussed certain contracts which it found had been entered into under the direction of the Associated officials, whereby the New York State Railways was to pay for services to be rendered by a management company, a construction company, and a purchasing company. The commission concluded that no substantial services were rendered by these companies. *Re New York State Railways, Case No. 6066.*

Security Issues Not Related to Utility Service Denied Approval

CONTINUING its policy of rigid supervision of securities issued by New York state utilities, the New York commission has denied a petition of the Staten Island Edison Corporation under § 69 of the Public Service Commission Law for authority to issue $8,500,000 principal amount of first and refunding mortgage gold bonds. The commission acted on the findings in the

report of Examiner Wilkinson of the commission's staff.

It appeared that in June, 1931, the utility issued notes of more than $7,000,000 face value bearing 3 per cent interest and maturing within a year, thereby being exempted from the necessity of commission approval. The proceeds from the sale of these notes were used to acquire and pay accrued interest on $5,650,000 face value of Associated Electric Company 4½ per cent gold bonds due in 1956. The original petition of the Staten Island Company contemplated the use of the proceeds of its own first mortgage bonds for the retirement of notes issued in 1931. The commission observed that in effect this would amount to authorizing the Staten Island Company to use its credit in the form of a first lien for the purchase of bonds of a holding company not under the jurisdiction of the commission and not operating within the state of New York. During the proceedings the original petition was amended so as to propose the substitution of other securities for the bonds of the Associated Electric Company. Some of these securities were for companies outside of New York and some were companies subject to commission jurisdiction.

In any event the commission concluded that the two proposals had the same characteristic features; namely, the use of the credit of the Staten Island Company for the acquisition of securities of other corporations not operating in Staten Island or in adjacent territory and, in some instances, far removed from the Staten Island Company and its sphere of activity. The petition was denied. *Re Staten Island Edison Corporation, Case No. 7471.*

A Ruling Concerning Water Extensions in Pennsylvania

WHEN certain residents in the borough of Westmont near the city of Johnstown, Pennsylvania, applied for service from the Johnstown Water Company, it appeared that the necessary investment which the company would have to make would be $3,820 whereas the expected revenue was approximately $260. In conformity with its established policy of making extensions, it expressed itself as being willing to expend $2,600 upon the extension, upon which sum the expected revenue would amount to 10 per cent. It, therefore, demanded that the complainants deposit with it an additional $1,220 which would be necessary, this sum apparently to be returned to them as the revenue from additional consumers would warrant the company in its judgment in investing more money in the extension.

The prospective consumers appealed to the Pennsylvania commission. The commission sustained the complaint and held that a utility would not be relieved of making necessary extensions merely because the prospective business did not assure it of a gross return of 10 per cent. It was said that while such a revenue was undoubtedly desirable, the commission could not accept it as a minimum to be required in all cases. It was observed that the general territory was a desirable residential section and had been developing substantially in recent years, and would probably continue to be developed.

The water company made a second contention that inasmuch as its charter powers and obligations were only to serve in what is now the city of Johnstown and vicinity, the commission was powerless to require it to make the extension in question. The commission, however, found that the company had actually been rendering service for upward of forty years in the borough of Westmont and that its trunk supply main passed within a few feet of the section to be served. The extension was accordingly ordered. *Hamilton v. Johnstown Water Co. Complaint Docket No. 9029.*

No Utility Dividends Declared until Earned

LAST March the Alabama commission commenced an investigation for the purpose of determining if the Birmingham Gas Company had paid any dividends upon its stock before they had been earned and to inquire into all contracts between the utility and the American Commonwealth Power Corporation of Delaware, and the American Gas & Power Company, and other affiliated or allied companies. Upon hearing, the utility introduced a statement that it was and would continue to be the policy of the management not to declare dividends on its capital common stock until earned, and that any dividend accruals already appearing on the books of the company against unearned surplus account would be restored to surplus and no further dividends accrued against unearned surplus. The utility also stated that the company would stand ready at all times to furnish to the commission full and detailed information required by the commission over and above the information contained in the regular files and reports.

After some investigation of the matter the Alabama commission has finally decided that it is necessary to broaden the scope of the inquiry so as to include investigation of all the rates, rules, service regulations, and practices of the utility, including its practice as to the sale of its own stock and the stock of its affiliated and allied corporations as well as into all contracts which the utility might have affecting its rates and service. The commission further ordered the Birmingham Gas Company to desist from declaring any further dividends upon its capital stock unless and until earned. *Alabama Public Service Commission v. Birmingham Gas Co.*

The Illinois Commission Will Investigate the Cradle-set Telephones

THE cradle-set telephone, sometimes called the "French style" telephone, seems to be occupying a considerable amount of attention on the part of commissions in the larger states. Not long ago the New Jersey commission after considerable deliberation refused to investigate the extra charge made for this type of service in that state. Last April the New York commission by a vote of 3 to 2 likewise refused to take up the charge that the extra fee was excessive. The majority of the New York commission in that case was of the opinion that the French telephone is a luxury, and that the standard set provides exactly as good telephonic communication as the French set. A vigorous dissenting opinion was registered by Chairman Maltbie. Now comes the decision of the Illinois commission citing the Illinois Bell Telephone Company to appear and show cause why the present additional charge of $3 per year for the use of handsets should not be reduced or eliminated. The Illinois charge has been in effect since 1928. The Illinois commission stated that the chief thing taken into consideration was the company's contention as to the extra cost of furnishing cradle sets. The company originally maintained that the extra charge should be 50 cents per month or $6 per year. This charge the commission reduced to 25 cents per month, or $3 per year. Now the commission is of the opinion that since the rate has been in effect for approximately four years, sufficient experience has accumulated as to maintenance cost "so that an investigation should reveal whether this charge should need to be reduced or eliminated entirely, or perhaps a time limit fixed when this charge should be done away with." The latter sugges-

tion of the commission is in accordance with the system voluntarily placed into effect by the Chesapeake and Potomac Telephone Company in the city of Washington with the approval of the District of Columbia Public Utilities Commission. *Re Illinois Bell Telephone Co.*

Disqualified Signatures Void Referendum Petition

A PETITION for a referendum vote on Nebraska's new bus law has been halted by the district court of that state under circumstances which seem very similar to the recent attempt to submit the Maryland taxicab regulatory law to a referendum vote in the latter state. It will be recalled that in Maryland the court found sufficient number of fraudulent signatures on the petition to warrant the conclusion that the remaining signatures in good faith were not sufficient in number to permit the secretary of state to proceed with a referendum election. Likewise, Judge Shepherd of the Lancaster county court in Nebraska has issued a restraining order directed against the secretary of state for Nebraska, commanding him not to submit the regulatory bus law to a referendum vote of the electors at the general election in November. The court pointed out that evidence indicated that three fourths of the names of the petitioners should be stricken from the list as disqualified, leaving the petition insufficient to refer the law to the people. *Sorensen v. Marsh.*

Temporary Order Cuts Wisconsin Phone Rates

A 12½ per cent reduction in the local rates of 102 exchanges operated by the Wisconsin Telephone Company and ordered by the Wisconsin commission was a startling stroke in public utility regulation, which will probably attract the attention of regulatory bodies and utility managements all over the country. The order came as a result of the current statewide investigation which will be continued on August 1st. The order just issued is temporary pending the completion of the case and is based upon the record thus far. The investigation was instituted by the commission on its own motion by an order dated July 29, 1931.

The commission ruled among other things that, because of the decrease in the average family income owing to the depression, the value of telephone service has fallen. It added that "while the tendency of the courts in recent years has been to give primary consideration to the cost of operation and return upon value, it must not be forgotten that it is still the law that rates, regardless of their effect upon the financial condition of the company, cannot exceed what the services are reasonably worth." The commission pointed out that when a subscriber pays $5 a month to the Wisconsin Telephone Company in April, 1932, he is paying very substantially more than he paid for the same services in 1928 when the rate may have been fixed by the commission as a reasonable one. In the wholesale market of today the same $5 is now worth $7.50.

Perhaps the most important point in the opinion was the fact that the commission definitely committed itself to the policy of cutting down a utility's rate of return during periods of economic depression. The opinion stated that when business generally is at as low an ebb of activity and profitableness as it is at present, it is inevitable that the telephone company must be content with a more moderate return than is its due in times of normal or more nearly